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Tuesday
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Reader Aids
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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 6346 of October 3, 1991

German-American Day, 1991 and 1992

By the President of the United States of America

A Proclamation

When German settlers landed in America near Philadelphia on October 6, 1683, they established the first of the many ties that exist between the United States and Germany. Since then, generations of German immigrants and their descendants have made outstanding contributions to American history and culture. However, the ties that we celebrate today are not only those born of kinship but also those based on common values and aspirations. Indeed, the same love of liberty that led the first German immigrants to these shores continues to animate U.S.-German relations.

For more than 40 years following World War II, the United States stood together with its friends in the Federal Republic of Germany to help guarantee that nation's freedom and security and to advance our common interests. Yet we also shared the hope that all Germans would one day enjoy the blessings of liberty in a united, democratic, and sovereign Germany. The dramatic opening of the Berlin Wall in November 1989 and the official unification of Germany less than one year later marked the achievement of that goal. Today the United States looks forward to continuing the friendship that our two peoples have so long enjoyed. Active trade and close political cooperation within the context of the Atlantic Alliance are among the most important dimensions of this relationship. However, we also value our various "people-to-people" contacts and exchanges. Accordingly, to promote the exchange of information and ideas with the five new Federal States of Germany—which for too long had been isolated by the ruling communist regime—we have joined with the German government in establishing the RIAS Foundation. In addition to facilitating cooperative radio and television productions, the Foundation will offer training and other programs for students, broadcast journalists, and other media professionals. This year the United States also opened a new Consulate General in the city of Leipzig, further strengthening the ties between our two peoples.

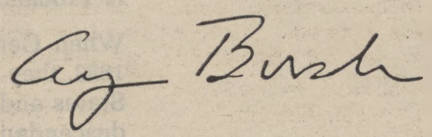
The new, united Germany that stands in friendship with the United States also stands as our partner in leadership. After Iraqi forces launched their brutal invasion of Kuwait on August 2, 1990, Germany joined in the international coalition that condemned the aggression and resolved to uphold the rule of law. Moreover, today's Germany not only symbolizes a new Europe, a Europe whole and free, but also is helping to lead the effort to achieve this goal. Along with the United States and other Western nations, Germany is offering valuable support to the emerging democracies of Central and Eastern Europe through investment, training programs, and technical assistance.

In keeping with its enhanced stature as a force for peace and stability in global affairs, Germany will host the next summit of the world's seven leading industrialized nations. The United States looks forward to this meeting in Munich in July 1992, and we welcome the many opportunities that lie ahead in U.S.-German relations.

The Congress, by Senate Joint Resolution 151, has designated October 6, 1991, and October 6, 1992, as "German-American Day" and has authorized and requested the President to issue a proclamation in observance of these occasions.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 6, 1991, and October 6, 1992, as German-American Day. I call upon the people of the United States to observe these occasions with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of October, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth



[FR Doc. 91-24406
Filed 10-4-91; 4:17 pm]
Billing code 3195-01-M

Editorial note: For the President's remarks on German-American Day, see issue 40 of the *Weekly Compilation of Presidential Documents.*

Presidential Documents

Proclamation 6347 of October 4, 1991

National Radon Action Week, 1991

By the President of the United States of America

A Proclamation

Radon is a naturally occurring, colorless gas that, when concentrated in high levels, can pose a threat to human health. Generated by the natural breakdown of uranium in soil, rock, and groundwater, radon can gradually seep into any building through cracks and other openings in the foundation. Because radon has been detected in every State across the country, all Americans should be aware of this potential hazard.

High levels of radon in the home are believed to be the second leading cause of lung cancer in the United States. Indeed, only smoking causes more deaths by the disease. People who smoke *and* dwell in a house with unacceptable levels of radon run an especially high risk of developing lung cancer.

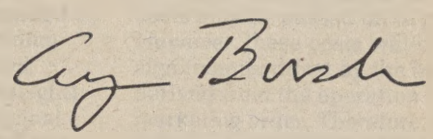
Fortunately, even extremely high levels of radon in the home can be reduced, and testing for the gas is relatively simple and inexpensive. Indeed, testing one's home, school, or office for radon should require little time and few resources.

The United States Environmental Protection Agency has joined with a number of State governments in promoting local efforts to help Americans test their homes and schools. Other organizations that are sharing in these efforts include: the American Lung Association, the Advertising Council, the Consumer Federation of America, the American Public Health Association, the National Safety Council, and the National Association of Counties. This week, I join with them in urging all Americans to test their homes for radon and to make any necessary modifications to reduce excessive levels of the gas.

The Congress, by Senate Joint Resolution 132, has designated the week of October 13 through October 19, 1991, as "National Radon Action Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of October 13 through October 19, 1991, as National Radon Action Week. I encourage government officials and all Americans to observe this week with appropriate programs and activities designed to enhance public awareness of the risks of excessive radon exposure and ways that we can reduce them.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of October, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.



[FR Doc. 91-24426
Filed 10-4-91; 4:34 pm]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

[Docket No. FV-91-426FR]

Expenses and Assessment Rate for Marketing Order Covering Domestic Dates Produced or Packed in Riverside County, CA

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order 987 for the 1991–92 crop year (October 1, 1991 through September 30, 1992). This action is needed by the California Date Administrative Committee (committee) to incur operating expenses during the 1991–92 crop year and to collect funds during that year to pay those expenses. This will facilitate program operations. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: October 1, 1991 through September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–475–3862.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 987 (7 CFR part 987), regulating the handling of dates produced or packed in Riverside County, California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 25 handlers of California dates regulated under the date marketing order each season, and approximately 135 date producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The California date marketing order, administered by the Department, requires that the assessment rate for a particular crop year apply to all assessable dates handled from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The members of the committee are date handlers and producers. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected shipments of dates (in hundredweight). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on August 14, 1991, and recommended 1991–92 crop year expenditures of $479,400 and an assessment rate of $1.40 per hundredweight of assessable dates shipped under M.O. 987. The recommended assessment rate and level of expenditures for the 1991–92 crop year are the same as last year's.

The major expenditure item this year is $429,000 for continuation of the committee's market promotion program. The industry continues to be faced with an oversupply of product dates and the committee considers this program necessary to stimulate sales. The only significant difference between the expenditures budgeted for the 1991–92 crop year and those budgeted last year is a $50,000 increase in "office overhead and special projects" which is offset by a $50,000 decrease in market development expenditures. The committee plans to use a portion of the 100,000 budgeted for overhead and special projects to pay the salary and benefits of the executive director it recently hired to manage its market promotion activities. The rest of the expenditures are for program administration and are budgeted at about last year's amounts.

Income for the 1991–92 season is expected to total $495,500. Such income consists of $490,000 in assessments based on shipments of 35,000,000 assessable pounds of dates at $1.40 per hundredweight and $5,500 in interest income. Any unexpended funds or excess assessments from the 1990–91 crop year will be placed in the committee's operating reserve. The reserve is well within the maximum amount authorized under the order.

Notice of this action was published in the September 11, 1991, issue of the **Federal Register** (56 FR 46243). The comment period ended September 23, 1991. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have

a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendations submitted by the committee, and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

Approval of the level of expenses and assessment rate for the date program for the 1991–92 crop year should be expedited because the committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553).

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 987 is amended as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR part 987 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 987.336 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 987.336 Expenses and assessment rate.

Expenses of $479,400 by the California Date Administrative Committee are authorized, and an assessment rate of $1.40 per hundredweight of assessable dates is established for the crop year ending September 30, 1992. Unexpended funds from the 1990–91 crop year may be carried over as a reserve.

Dated: October 2, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–24196 Filed 10–7–91; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Part 1902

Revision of Regulations Due to Changes in the Pledging and Releasing of Collateral in Supervised Bank Accounts

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to clarify changes in the pledging and/or releasing of collateral by financial institutions pertaining to the deposit of funds in supervised bank accounts. This action is necessary to remove present language in the regulations that requires the Department of Treasury to designate the financial institution as a depositary and financial agent of the U.S. Government and to pledge or release collateral through the Federal Reserve Bank (FRB). FmHA now has the authority to designate the financial institution as a depositary and financial agent of the U.S. Government and to pledge or release collateral through the FRB.

EFFECTIVE DATE: October 8, 1991.

FOR FURTHER INFORMATION CONTACT: Peggy Williams, Collateral Technician, Revolving Fund Analysis Branch, Budget Division, Farmers Home Administration, USDA, South Building, 14th Street and Independence Avenue, SW., Washington, DC 20250, telephone (202) 475–3388.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only rules of agency procedure and internal management. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rule making since it involves only rules of agency procedure and internal agency management, making publication for comment unnecessary.

Intergovernmental Consultation

For the reasons set forth in the final rule related to Notice 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Farm Ownership Loans, Farm Operating Loans and Emergency Loans are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials. Soil and Water Loans are subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.414 Resource Conservation and Development Loans.
10.415 Rural Rental Housing Loans.
10.418 Water and Waste Disposal Systems for Rural Communities.
10.419 Watershed Protection and Flood Prevention Loans.
10.423 Community Facilities Loans.

Environmental Impact Statement

This action has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

List of Subjects in 7 CFR Part 1902

Accounting, Banks, Banking, Grant programs—Housing and community development, Loan programs—Agriculture, Loan programs—Housing and community programs.

Therefore, chapter XVIII, part 1902, title 7, Code of Federal Regulations is amended as follows:

PART 1902—SUPERVISED BANK ACCOUNTS

1. The authority citation for part 1902 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23, 2.70.

Subpart A—Loan and Grant Disbursement

2. Sections 1902.7 is amended by revising paragraphs (a), (b)(2) and (3), (d), (e) and (f) to read as follows:

§ 1902.7 Pledging collateral for deposit of funds in supervised bank accounts.

(a) Funds in excess of $100,000, per financial institution, deposited for borrowers in supervised bank accounts, must be secured by pledging acceptable collateral with the Federal Reserve Bank (FRB) in an amount not less than the excess.

(b) * * *

(2) Whether the financial institution is willing to pledge collateral with the FRB under 31 CFR part 202 (Treasury Circular 176) to the extent necessary to secure the amount of funds being deposited in excess of $100,000.

(3) If the financial institution is not a member of the Federal Reserve System, it will be necessary for the financial institution to pledge the securities with a correspondent bank who is a member of the System. The correspondent bank should contact the FRB informing them they are holding securities pledged for the supervised bank account under 31 CFR part 202 (Treasury Circular 176).

* * * * *

(d) The National Office will arrange for the financial institution under its designation as a depositary and financial agent of the U.S. Government to pledge the requested collateral.

(e) If, two days before loan closing, the local FmHA office which requested the collateral has not received notification from National Office that collateral has been pledged, contact should be made with the financial institution to ascertain whether they have pledged collateral with their local FRB under 31 CFR part 202 (Treasury Circular 176). If the financial institution has pledged collateral, the local FmHA office should contact the National Office, Budget Division, Revolving Fund Analysis Branch who will follow-up with the local FRB concerning the collateral.

(f) When the amount of deposit in the supervised bank account has been reduced to a point where the financial institution desires part or all of the collateral released, it should contact the National Office at the address noted above. The local FmHA office will be contacted for release authorization. The authorization release will be made through the local FRB, with notification to the financial institution. The local FmHA office may also request release through the National Office.

Dated: September 4, 1991.

David T. Chen,

Associate Administrator, Farmers Home Administration.

[FR Doc. 91-23697 Filed 10-7-91; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-187-AD; Amendment 39-8049; AD 91-21-02]

Airworthiness Directives; McDonnell Douglas DC-9-80 Series Airplanes Equipped With Certain Sundstrand Data Control Management Control Units

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas DC-9-80 series airplanes, which requires removal of certain Sundstrand Data Control management control units (MCU). This amendment is prompted by a report of an electrical short inside the MCU which caused the MCU battery to burst and blow the MCU case open. This condition, if not corrected, could result in damage to other aircraft systems in the electrical and electronics compartment.

DATES: Effective October 23, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 23, 1991.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. J. Kirk Baker, Aerospace Engineer, ANM-133L, FAA, Northwest Mountain Region, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5345.

SUPPLEMENTARY INFORMATION: Sundstrand Data Control has reported that, during a recent bench test of a certain management control unit (MCU), a short occurred which allowed excessive reverse current through the MCU battery, causing it to burst and blow the MCU case open. These suspect units are installed on some McDonnell Douglas Model DC-9-80 series airplanes. An in-flight electrical short in the MCU, causing the MCU battery to burst and blow the MCU case open, could result in damage to safety-critical systems also located in the electrical and electronics compartment. This condition, if not corrected, could jeopardize the continued safe operation of the airplane.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A31-39, which describes procedures for the removal and disposition of the suspect MCU's. This service document was initially released as a telex on August 15, 1991, and then as a paper copy service bulletin on August 19, 1991.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires removal of certain Sundstrand Data Control MCU's, in accordance with the service bulletin previously described.

The MCU is used to record maintenance data only and is an optional system. Removal of the MCU does not adversely affect the safe operation of the airplane; however, operators who wish to replace the suspect MCU's may do so only with an FAA-approved MCU having a specific part number.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11304, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91–21–02. **McDonnell Douglas:** Amendment 39–8049. Docket No. 91–NM–187–AD.

Applicability: Model DC–9–80 series airplanes; equipped with Sundstrand Data Control management control units (MCU), part number (P/N) 960–0511–001, –002, or –003; certificated in any category.

Compliance: Required within 15 days after the effective date of this AD, unless previously accomplished.

To prevent in-flight electrical shorting of the MCU that could cause the MCU battery to burst and blow the MCU case open and damage other aircraft systems in the electrical and electronics compartment, accomplish the following:

(a) Remove Sundstrand MCU, P/N 960–0511–001, –002, or –003, in accordance with McDonnell Douglas Alert Service Bulletin A31–39, dated August 15, 1991 (telex), or August 19, 1991 (service bulletin).

Note: In accordance with Federal Aviation Regulation (FAR) 121.367, any operator who currently uses the MCU specified in paragraph (a) of this AD to record maintenance data required by its FAA-approved maintenance program must obtain approval from its FAA Principal Maintenance Inspector for an alternative method of recording this data.

Note: MCU's specified in paragraph (a) of this AD may be replaced with an FAA-approved Sundstrand MCU, P/N 960–0511–011.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Avionics Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(d) The removal requirements shall be done in accordance with McDonnell Douglas Alert Service Bulletin A31–39, which was released as a telex dated August 15, 1991, and as a paper copy service bulletin dated August 19, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39–8049, AD 91–21–02) becomes effective on October 23, 1991.

Issued in Renton, Washington, on September 23, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–24186 Filed 10–7–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–174–AD; Amendment 39–8052; AD 91–21–05]

Airworthiness Directives; McDonnell Douglas Model DC–10–10 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10 series airplanes, which requires inspection of the wing rear spar lower cap aft tang fastener and wing trailing edge access door sill. This amendment is prompted by reports of cracks in the wing rear spar lower cap aft tang on four aircraft. This condition, if not detected, could compromise the structural integrity of these airplanes.

DATES: Effective October 23, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 23, 1991.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach California 90806–0001, Attention: Business Unit Manager of Technical Publications, Technical Administrative Support C1–L5B (54–60).This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Dorenda D. Baker, Aerospace Engineer, Airframe Branch, ANM–121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5231.

SUPPLEMENTARY INFORMATION: The FAA has received reports from two operators indicating that cracks have been found in the wing rear spar lower cap aft tang on four Model DC–10 series airplanes. Investigation revealed that the cracks initiated from fatigue and propagated by fatigue. The subject airplanes had each accumulated fewer than 19,000 landings.

The subject area is covered by the Supplemental Inspection Document (SID), (required by AD 89–22–10, Amendment 39–6330 (54 FR 42291, October 16, 1989)) as Principal Structural Element (PSE) No. 57.10.007/57.10.008. The inspections required for this PSE follow the fleet leader sampling criteria with a fatigue life threshold (N_{th}) of 36,363 landings, which corresponds to a life when the probability of failure per flight reaches 10^{-9}, i.e., failure is extremely improbable. Sampling inspections were to begin in September 1989 for those airplanes that had exceeded $N_{th/2}$ (18,181 landings). Since all cracks have been detected on aircraft with less than 19,000 landings, and a PSE is defined as structure the failure of which, if undetected, could lead to loss of the structural integrity of the airplane, the FAA has determined that an additional AD is warranted to require inspection of the wing rear spar lower cap aft tang and wing trailing edge access door sill located between stations $X_{ors}=417$ and $X_{ors}=424$ on certain Model DC–10 series airplanes after they accumulate 7,000 landings. Such inspections would ensure that fatigue cracking is detected in a more timely manner, long before cracking reaches a critical length. Fatigue cracking in this area, if not detected, could compromise the structural integrity of these airplanes.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A57–123, dated July 25, 1991, which describes procedures for inspection of the wing rear spar lower cap aft tang and wing trailing edge

access door sill located between stations $X_{ors}=417$ and $X_{ors}=424$.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires the inspection of the wing rear spar lower cap aft tang and wing trailing edge access door sill located between stations $X_{ors}=417$ and $X_{ors}=424$ in accordance with the service bulletin previously described, and repair, if necessary. This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-21-05. **McDonnell Douglas:** Amendment 39-8052. Docket No. 91-NM-174-AD.

Applicability: Model DC-10-10, -10F, and -15 series airplanes, fuselage numbers through 379; and Model DC-10-30, -30F, and -40 series airplanes, fuselage numbers through 275; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To ensure the structural integrity of these airplanes, accomplish the following:

(a) Except as provided in paragraphs (b) through (e) of this AD, prior to the accumulation of 7,000 landings or within 30 days after the effective date of this AD, conduct the initial inspections specified in paragraphs (a)(1), (a)(2), or (a)(3) of this AD.

(1) Conduct an eddy current inspection of the wing rear spar lower cap aft tang and a dye penetrant inspection of the wing trailing edge access door sill located between stations $X_{ors}=417$ and $X_{ors}=424$ in accordance with Option III of McDonnell Douglas Alert Service Bulletin A57-123, dated July 25, 1991. In addition, within 1,500 landings after performing these eddy current and dye penetrant inspections, conduct the inspections specified in paragraph (a)(2) or (a)(3) of this AD and repeat thereafter as indicated. Or

(2) Conduct an ultrasonic inspection of the area around the six wing rear spar lower cap aft tang fasterner holes and a dye penetrant inspection of the wing trailing edge access door sill located between stations $X_{ors}=417$ and $X_{ors}=424$ in accordance with Option II of McDonnell Douglas Alert Service Bulletin A57-423, dated July 25, 1991. Repeat these inspections at intervals not to exceed 1,900 landings. Or

(3) Conduct an eddy current inspection of the six wing rear spar lower cap aft tang fastener holes and a dye penetrant inspection of the wing trailing edge access door sill located between stations $X_{ors}=417$ and $X_{ors}=424$ in accordance with Option I of McDonnell Douglas Alert Service Bulletin A57-123, dated July 25, 1991. Repeat these inspections at intervals not to exceed 3,300 landings.

(b) The requirements of paragraph (c) of this AD apply to airplanes on which the following actions have been accomplished:

(1) The dye penetrant inspection of the wing trailing edge access door sill located between stations $X_{ors}=417$ and $X_{ors}=422$ has been accomplished prior to the effective date of this AD, in accordance with McDonnell Douglas Service Bulletin 57-61, Revision 2, dated August 15, 1990; and

(2) The eddy current inspection of the wing rear spar lower cap aft tang has been accomplished prior to the effective date of this AD per DC-10 Supplemental Inspection Document, Principal Structural Element (PSE) 57.10.007 and 57.10.008, in accordance with McDonnell Douglas Service Bulletin 57-61, Revision 2, dated August 15, 1990.

(c) For airplanes specified in paragraph (b) of this AD, conduct the initial inspections specified in either paragraph (c)(1) or (c)(2) of this AD within 1,500 landings after the inspections (eddy current and dye penetrant) specified in paragraph (b)(1) of this AD, or within 30 days after the effective date of this AD, whichever occurs later.

(1) Conduct an ultrasonic inspection of the area around the six wing rear spar lower cap aft tang fastener holes and a dye penetrant inspection of the wing trailing edge access door sill located between stations $X_{ors}=417$ and $X_{ors}=424$, in accordance with Option II of McDonnell Douglas Alert Service Bulletin A57-123, dated July 25, 1991. Repeat these inspections at intervals not to exceed 1,900 landings. Or

(2) Conduct an eddy current inspection of the six wing rear spar lower cap aft tang fastener holes and a dye penetrant inspection of the wing trailing edge access door sill located between stations $X_{ors}=417$ and $X_{ors}=424$, in accordance with Option I of McDonnell Douglas Alert Service Bulletin A57-123, dated July 25, 1991. Repeat these inspections at intervals not to exceed 3,300 landings.

(d) The requirements of paragraph (e) of this AD apply to airplanes on which the following actions have been accomplished:

(1) The dye penetrant inspection of the wing trailing edge access door sill located between stations $X_{ors}=417$ and $X_{ors}=422$ has been accomplished prior to the effective date of this AD, in accordance with McDonnell Douglas Service Bulletin 57-61, Revision 2, dated August 15, 1990; and

(2) The eddy current inspection of the wing rear spar lower cap aft tang fastener holes located between stations $X_{ors}=417$ and $X_{ors}=422$ DPS 4.735-9 has been accomplished prior to the effective date of this AD per in accordance with McDonnell Douglas Service Bulletin 57-61, Revision 2, dated August 15, 1990.

(e) For airplanes specified in paragraph (d) of this AD, conduct the initial inspections specified in either paragraph (e)(1) or (e)(2) of this AD within 3,300 landings after the accomplishment of the inspection specified in paragraph (d)(1) of this AD, or within 30 days after the effective date of this AD, whichever occurs later.

(1) Conduct an ultrasonic inspection of the area around the six wing rear spar lower cap aft tang fastener holes and a dye penetrant inspection of the wing trailing edge access door sill located between stations $X_{ors}=417$ and $X_{ors}=424$ in accordance with Option II of McDonnell Douglas Alert Service Bulletin A57-123, dated July 25, 1991. Repeat these inspections at intervals not to exceed 1,900 landings. Or

(2) Conduct an eddy current inspection of the six wing rear spar lower cap aft tang fastener holes and a dye penetrant inspection of the wing trailing edge access door sill located between stations $X_{ors}=417$ and $X_{ors}=424$ in accordance with Option I of

McDonnell Douglas Alert Service Bulletin A57-123, dated July 25, 1991. Repeat these inspections at intervals not to exceed 3,300 landings.

(f) If any cracks are found as a result of the inspections conducted in accordance with this AD, prior to further flight, repair in a manner approved by the Manager of the Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate to a base in order to comply with the requirements of this AD.

(h) An alternative method of compliance or adjustment time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through the FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(i) The inspection requirements shall be done in accordance with McDonnell Douglas Alert Service Bulletin A57-123, dated July 25, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach California 90806-0001, Attention: Business Unit Manager of Technical Publications, Technical Administrative Support C1-L5B (54-60). Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39-8052, AD 91-21-05) becomes effective on October 23, 1991.

Issued in Renton, Washington, on September 25, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-24187 Filed 10-7-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, 522, 524, 540 and 558

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the change of sponsor name for SmithKline Animal Health Products, Division of SmithKline Beckman Corp. to SmithKline Beecham Animal Health due to a merger with Beecham Laboratories, Division of Beecham, Inc. The regulations will also reflect: the change of sponsor for 28 new animal drug applications (NADA's) from Beecham Laboratories, Division of Beecham Inc., to SmithKline Beecham Animal Health, and the change of sponsor for 22 NADA's from Norden Laboratories, Inc., to SmithKline Beecham Animal Health also due to the merger. The new company is being assigned a new sponsor labeler code for their animal drug products.

EFFECTIVE DATE: October 8, 1991.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8646.

SUPPLEMENTARY INFORMATION: SmithKline Animal Health Products, Division of SmithKline Beckman Corp., 1600 Paoli Pike, West Chester, PA 19360, has merged with Beecham Laboratories, Division of Beecham, Inc., Bristol, TN 37620, and has submitted a supplemental application for a change of sponsor name. The resulting company, and new sponsor of all approved NADA's previously held by Beecham Laboratories or Norden Laboratories, is SmithKline Beecham Animal Health, 1600 Paoli Pike, West Chester, PA 19360. The new company is being assigned a new sponsor labeler code for their animal drug products.

The agency is amending 21 CFR 510.600 (c)(1) and (c)(2) to reflect the change of sponsor name for SmithKline Animal Health Products, Division of SmithKline Beckman Corp. to SmithKline Beecham Animal Health. The agency is also amending 21 CFR Parts 520, 522, 524, 540, and 558 to reflect: The change of sponsor for 28 NADA's from Beecham Laboratories and the change of sponsor for 22 NADA's from Norden Laboratories, Inc., to SmithKline Beecham Animal Health.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

21 CFR Part 522

Animal drugs.

21 CFR Part 524

Animal drugs.

21 CFR Part 540

Animal drugs, Antibiotics.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, 522, 524, 540, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.600 [Amended]

2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entries for "Beecham Laboratories, Division of Beecham, Inc.," and "Norden Laboratories, Ltd.," and by removing the entry for "SmithKline Animal Health Products, Division of SmithKline Beckman Corp." and by alphabetically adding a new entry "SmithKline Beecham Animal Health" and in the table in paragraph (c)(2) by removing the entries for "000007," "000029," and "011519," and by numerically adding a new entry for "053571" to read as follows:

§ 510.600 Names, addresses and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm and name and address	Drug labeler code
* * * * *	
SmithKline Beecham Animal Health	053571
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
053571.....	SmithKline Beecham Animal Health, 1600 Paoli Pike, West Chester, PA 19380.
* * * * *	

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.45a [Amended]

4. Section 520.45a. *Albendazone suspension* is amended in paragraph (b) by removing "000007" and replacing it with "053571".

§ 520.45b [Amended]

5. Section 520.45b *Albendazole paste* is amended in paragraph (b) by removing "000007" and replacing it with "053571".

§ 520.540c [Amended]

6. Section 520.540c *Dexamethasone chewable tablets* is amended in paragraph (b) by removing "000029" and replacing it with "053571".

§ 520.550 [Amended]

7. Section 520.550 *Dextrose/glycine/electrolyte* is amended in paragraph (b) by removing "000029" and replacing it with "053571".

§ 520.622c [Amended]

8. Section 520.622c *Diethylcarbamazine citrate chewable tablets* is amended in paragraph (b)(2) by removing "011519" and replacing it with "053571", and by removing and reserving paragraph (b)(7).

§ 520.623 [Amended]

9. Section 520.623 *Diethylcarbamazine citrate, oxibendazole chewable tablets* is amended in paragraph (b) by removing "011519" and replacing it with "053571".

§ 520.816 [Amended]

10. Section 520.816 *Epsiprantel tablets* is amended in paragraph (b) by removing "000029" and replacing it with the number "053571".

§ 520.1284 [Amended]

11. Section 520.1284 *Sodium liothyronine tablets* is amended in paragraph (b) by removing "011519" and replacing it with "053571".

§ 520.1638 [Amended]

12. Section 520.1638 *Oxibendazole paste* is amended in paragraph (b) by removing "011519" and replacing it with "053571".

§ 520.1640 [Amended]

13. Section 520.1640 *Oxibendazole suspension* is amended in paragraph (b) by removing "011519" and replacing it with "053571".

§ 520.1840 [Amended]

14. Section 520.1840 *Poloxalene* is amended in paragraph (c)(1) by removing "011519" and replacing it with "053571", and in paragraph (c)(2) by removing "000007" and replacing it with "053571".

§ 520.1920 [Amended]

15. Section 520.1920 *Prochlorperazine, isopropamide sustained release capsules* is amended in paragraph (b) by removing "011519" and replacing it with "053571".

§ 520.1921 [Amended]

16. Section 520.1921 *Prochlorperazine, isopropamide with neomycin sustained-release capsules* is amended in paragraph (b) by removing "011519" and replacing it with "053571".

§ 520.2260a [Amended]

17. Section 520.2260a *Sulfamethazine oblets and boluses* is amended in paragraph (b)(1) by removing "011519" and replacing it with "053571".

§ 520.2260b [Amended]

18. Section 520.2260c *Sulfamethazine sustained-release boluses* is amended in paragraph (b)(1) by removing "011519" and replacing it with "053571".

§ 520.2260c [Amended]

19. Section 520.2260b *Sulfamethazine sustained-release tablets* is amended in paragraph (a) by removing "011519" and replacing it with "053571".

§ 520.2604 [Amended]

20. Section 520.2604 *Trimeprazine tartrate and prednisolone tablets* is amended in paragraph (b) by removing "011519" and replacing it with "053571".

§ 520.2605 [Amended]

21. Section 520.2605 *Trimeprazine tartrate and prednisolone capsules* is amended in paragraph (b) by removing "011519" and replacing it with "053571".

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

22. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 522.540 [Amended]

23. Section 522.540 *Dexamethasone injection* is amended in paragraph (d)(2)(i) by removing "000029" and replacing it with "053571".

§ 522.1290 [Amended]

24. Section 522.1290 *Luprostiol sterile solution* is amended in paragraph (b) by removing "011519" and replacing it with "053571".

§ 522.1920 [Amended]

25. Section 522.1920 *Prochlorperazine, isopropamide for injection* is amended in paragraph (b) by removing "011519" and replacing it with "053571".

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

26. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 524.1005 [Amended]

27. Section 524.1005 *Furazolidone aerosol powder* is amended in paragraph (b)(1) by removing "000007" and replacing it with "053571".

§ 524.1465 [Amended]

28. Section 524.1465 *Mupirocin ointment* is amended in paragraph (b) by removing "000029" and replacing it with "053571".

§ 524.1580b [Amended]

29. Section 524.1580b *Nitrofurazone ointment* is amended in paragraph (b) by removing "011519" and replacing it with "053571".

§ 524.1580c [Amended]

30. Section 524.1580c *Nitrofurazone soluble powder* is amended in paragraph (b) by removing "011519" and replacing it with "053571".

§ 524.1600a [Amended]

31. Section 524.1600a *Nystatin, neomycin, thiostrepton, and triamcinolone acetonide ointment* is amended in paragraph (b) by removing "011519" and replacing it with "053571".

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

32. The authority citation for 21 CFR part 540 continues to read as follows:

Authority: Secs. 507, 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357, 360b).

§ 540.103a [Amended]

33. Section 540.103a *Amoxicillin trihydrate film-coated tablets* is amended in paragraph (c)(2) by removing "000029" and replacing it with "053571".

§ 540.103b [Amended]

34. Section 540.103b *Amoxicillin trihydrate for oral suspension* is amended in paragraph (c)(2) by

removing "000029" and replacing it with "053571".

§ 540.103c [Amended]

35. Section 540.103c *Amoxicillin trihydrate oral suspension* is amended in paragraph (c)(2) by removing "000029" and replacing it with "053571".

§ 540.103d [Amended]

36. Section 540.103d *Amoxicillin trihydrate soluble powder* is amended in paragraph (c)(2) by removing "000029" and replacing it with "053571".

§ 540.103e [Amended]

37. Section 540.103e *Amoxicillin trihydrate boluses* is amended in paragraph (c)(2) by removing "000029" and replacing it with "053571".

§ 540.103g [Amended]

38. Section 540.103g *Amoxicillin trihydrate and clavulanate potassium film-coated tablets* is amended in paragraph (c)(2) by removing "000029" and replacing it with "053571".

§ 540.103h [Amended]

39. Section 540.103h *Amoxicillin trihydrate and clavulanate potassium for oral suspension* is amended in paragraph (c)(2) by removing "000029" and replacing it with "053571".

§ 540.107a [Amended]

40. Section 540.107a *Ampicillin trihydrate tablets* is amended in paragraph (c)(2) by removing "000029" and replacing it with "053571".

§ 540.107e [Amended]

41. Section 540.107e *Amoxicillin trihydrate boluses* is amended in paragraph (c)(4)(ii) by removing "000029" and replacing it with "053571".

§ 540.203 [Amended]

42. Section 540.203 *Sterile amoxicillin trihydrate for suspension* is amended in paragraphs (c)(1)(ii), and (c)(2)(ii) by removing "000029" and replacing it with "053571".

§ 540.207a [Amended]

43. Section 540.207a *Sterile ampicillin trihydrate suspension* is amended in paragraph (c)(2)(i) by removing "000029" and replacing it with "053571".

§ 540.209 [Amended]

44. Section 540.209 *Ampicillin sodium for aqueous injection* is amended in paragraph (c)(2) by removing "000029" and replacing it with "053571".

§ 540.255c [Amended]

45. Section 540.255c *Sterile benzathine penicillin G and procaine penicillin G suspension* is amended in paragraphs (c)(2)(i) and (c)(2)(ii) by removing "000029" and replacing it with "053571".

§ 540.680 [Amended]

46. Section 540.680 *Ticarcillin* is amended in paragraph (c)(2) by removing "000029" and replacing it with "053571".

§ 540.803 [Amended]

47. Section 540.803 *Amoxicillin trihydrate for intramammary infusion* is amended in paragraph (c)(2) by removing "000029" and replacing it with "053571".

§ 540.814 [Amended]

48. Section 540.814 *Benzathine cloxacillin for intramammary infusion* is amended in paragraph (c)(2)(ii) by removing "000029" and replacing it with "053571".

§ 540.814a [Amended]

49. Section 540.814a *Sterile benzathine cloxacillin for intramammary infusion* is amended in paragraph (c)(2)(ii) by removing "000029" and replacing it with "053571".

§ 540.815 [Amended]

50. Section 540.815 *Sterile sodium cloxacillin for intramammary infusion* is amended in paragraph (c)(2) by removing "000029" and replacing it with "053571".

§ 540.815a [Amended]

51. Section 540.815a *Cloxacillin sodium for intramammary infusion* is amended in paragraph (c)(2) by removing "000029" and replacing it with "053571".

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

52. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.464 [Amended]

53. Section 558.464 *Poloxalene* is amended in paragraph (a) by removing "000007" and replacing it with "053571".

§ 558.465 [Amended]

54. Section 558.465 *Poloxalene free-choice liquid Type C feed* is amended in paragraph (a) by removing "000007" and replacing it with "053571".

§ 558.635 [Amended]

55. Section 558.635 *Virginiamycin* is amended in paragraph (b)(1) by removing "000007" and replacing it with "053571".

Dated: September 30, 1991.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 91-24169 Filed 10-7-91; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject To Certification; Febantel Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Mobay Corp. The NADA provides for the use of febantel tablets as an anthelmintic in dogs, puppies, cats, and kittens.

EFFECTIVE DATE: October 8, 1991.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV-112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8614.

SUPPLEMENTARY INFORMATION: Mobay Corp., Animal Health Division, Box 390, Shawnee Mission, KS 66201, filed NADA 140-912, which provides for the use of Rintal® Tabs (two tablet sizes: 27.2 milligrams (mg) febantel for dogs, puppies, cats, and kittens; and 163.3 mg febantel for dogs, puppies, and cats) for the removal of hookworms (*Ancylostoma caninum* and *Uncinaria stenocephala*), ascarids (*Toxocara canis* and *Toxascaris leonina*), and whipworms (*Trichuris vulpis*) in dogs and puppies; and hookworms (*Ancylostoma tubaeforme*) and ascarids (*Toxocara cati*) in cats and kittens. The NADA is approved as of July 19, 1991, and 21 CFR 520.903 is amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval

qualifies for a 3-year term of marketing exclusivity because new clinical or field investigations (other than bioequivalence studies), essential to the approval of the application were conducted by the sponsor in order to establish target animal safety for this dosage form (tablets) of febantel.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment.

Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. New § 520.903e is added to read as follows:

§ 520.903e Febantel tablets.

(a) *Specifications.* Each scored tablet contains 27.2 milligrams of febantel for use in dogs, puppies, cats, and kittens or 163.3 milligrams of febantel for use in dogs, puppies, and cats.

(b) *Sponsor.* See 000859 in § 510.600(c)(2) of this chapter.

(c) *Conditions of use*—(1) *Amount*—(i) *Dogs and cats.* Ten milligrams per kilogram body weight. Administer once daily for 3 consecutive days.

(ii) *Puppies and kittens fewer than 6 months of age.* Fifteen milligrams per kilogram body weight. Administer once daily for 3 consecutive days.

(2) *Indications for use.* (i) For removal of hookworms (*Ancylostoma caninum* and *Uncinaria stenocephala*), ascarids (*Toxocara canis* and *Toxascaris leonina*) and whipworms (*Trichuris vulpis*) in dogs and puppies.

(ii) For removal of hookworms (*Ancylostoma tubaeforme*) and ascarids (*Toxocara cati*) in cats and kittens.

(3) *Limitations.* Do not use in pregnant animals. Consider alternative therapy or use with caution in animals with preexisting liver or kidney dysfunction. Administer to puppies and kittens on a full stomach. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: October 1, 1991.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 91-24170 Filed 10-7-91; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

Animal Drugs, Feeds, and Related Products; Lincomycin et al.

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations reflecting approval of six new animal drug applications (NADA's) held by various sponsors. The firms requested the withdrawal of approval of the NADA's. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA's.

EFFECTIVE DATE: October 18, 1991.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8749.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the following NADA's:

NADA	Sponsor	Product
99-098	Growmark, Inc., 1701 Towanda Ave., Bloomington, IL 61701.	Tylosin phosphate.
130-465	Growmark, Inc., 1701 Towanda Ave., Bloomington, IL 61701.	Tylosin/ sulfamethazine.
132-657	Carl S. Akey, Inc., P.O. Box 607, Lewisburg, OH 45338.	Lincomycin hydrochloride.
132-660	Feed Specialties Co., Inc., 1877 NE., 58th Ave., Des Moines, IA 50313.	Lincomycin hydrochloride.
133-832	Growmark, Inc., 1701 Towanda Ave., Bloomington, IL 61701.	Lincomycin hydrochloride.
134-701	Mac-Page, Inc., 1600 South Wilson Ave., Dunn, NC 28334.	Lincomycin hydrochloride.

The agency is issuing this final rule amending the regulations in 21 CFR 558.325, 558.625, and 558.630 to reflect the withdrawal of approval of these NADA's.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.325 [Amended]

2. Section 558.325 *Lincomycin* is amended by removing and reserving paragraphs (a)(9), (a)(10), and (a)(12) and by removing paragraph (a)(15).

§ 558.625 [Amended]

3. Section 558.625 *Tylosin* is amended by removing and reserving paragraph (b)(27).

§ 558.630 [Amended]

4. Section 558.630 *Tylosin and sulfamethazine* is amended in paragraph (b)(10) by removing "020275,".

Dated: October 1, 1991.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 91-24214 Filed 10-7-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 91-074]

Special Local Regulation: New York National Championship Race, New York, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for the New York National Championship Race. The event, sponsored by Offshore Professional Tour, Inc., will take place on Sunday, October 6, 1991. Closure of the lower Hudson River between Battery Park and NYC Pier 76 is needed to protect the boating public from the hazards

associated with high speed powerboat racing in confined waters.

EFFECTIVE DATE: These regulations become effective at 12 p.m., October 6, 1991, and terminate at 4 p.m., October 6, 1991.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) C.W. Jennings, Waterways Management Officer, Coast Guard Group New York, (212) 668–7933.

SUPPLEMENTARY INFORMATION: As authorized by 5 U.S.C. 553, good cause exists for making these regulations effective in less than 30 days from the date of publication. In the interest of providing wide dissemination and affording the public the greatest opportunity to comment, normal rulemaking procedures were not followed. Proposed rules were published on short notice. The comment period ended three weeks before the scheduled date of the event. The desire to allow public comment, coupled with the need to publish these regulations so as to inform the public and insure the safety of the event made 30 day advance notice impractical.

Drafting Information

The principal persons involved in drafting this document are LTJG E.G. Westerberg, Project Manager, First Coast Guard District Boating Safety Division, LTJG C.W. Jennings, Coast Guard Group New York, and LCDR J. Astley, Project Counsel, First Coast Guard District Legal Division.

Regulatory History

On August 9, 1991, the Coast Guard published a notice of proposed rulemaking entitled Special Local Regulation: New York National Championship Race, New York, NY in the **Federal Register** (56 FR 37886). The Coast Guard received four letters commenting on the proposal. A public hearing was not requested and none was held.

Background and Purpose

On March 1, 1991, the sponsor, Offshore Professional Tour, submitted a request to hold an offshore powerboat race on the Hudson River, alongside Manhattan. This event will include up to 40 powerboats competing on an oval course for 150 miles at speeds approaching 100 m.p.h. An additional 200 spectator craft are expected to attend.

Discussion of Comments and Changes

1. Circle Line Sightseeing Yachts, Inc. expressed concern that all scheduled passenger runs on the day of the race would be eliminated by closure of the Lower Hudson river. In order to accommodate their schedule, closure time has been set back to 12 p.m. and the Circle Line has altered the routes of scheduled traffic to avoid conflict.

2. Operation of the Port Imperial Ferry, running between Weehawken, NJ and Pier 78, New York City, would also have been curtailed by the waterway closure. Accordingly, the race course has been shortened to extend northward only as far as Pier 76.

3. The Towboat and Harbor Carriers Conference registered general opposition to the powerboat race taking place in the Hudson River, citing safety considerations, and was opposed in principle to any waterway being closed to commercial traffic. The rain date for the powerboat race, originally requested for a week day has been cancelled due to the volume of commercial traffic during the week.

4. The Lincoln Harbor Yacht Club raised some commercial concerns not directly related to the conduct of the event or safety on the waterway.

5. Paragraphs (b)3 and (b)4 of the proposed regulations in the NPRM were deleted. As the final rule allows no traffic to enter the race zone, regulations regarding conduct of such traffic was deemed unnecessary.

6. Paragraphs (b)7, (b)8, and (b)9 of the regulations in the NPRM have been deleted. These paragraphs delineated guidelines for sponsor conduct during the race. These paragraphs were not regulatory in nature, but were conditions imposed on permit issuance. Therefore, they have been incorporated into the permit.

Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of these regulations is expected to be so minimal that a full regulatory evaluation is unnecessary.

Small Entities

Due to the limited duration of the race, the extensive advisories that have been and will be made to the affected maritime community, and the fact that the event is taking place on a Sunday afternoon, which is normally a very light volume day for commercial marine traffic, the impact of this regulation is expected to be minimal. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed these regulations in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of these regulations and concluded that under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination has been placed in the rulemaking docket and is available for public inspection and copying.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section, § 100.35–T1074 is added to read as follows:

§ 100.35–T1074 New York Championship Race.

(a) Regulated Area. The regulated area includes all waters of the Lower Hudson River south of a line drawn between Pier 76 Manhattan and a point on the New Jersey shore at 40°45'52" N latitude 74°01'01" W longitude, and north of a line connecting the following points:

Latitude	*Longitude*
40°42'16.0" N	74°01'09.0" W
40°41'55.0" N	74°01'16.0" W
40°41'47.0" N	74°01'36.0" W
40°41'55.0" N	74°01'59.0" W, then to shore at
40°42'20.5" N	74°02'06.0" W

(b) Special Local Regulations. (1) Commander, Coast Guard Group New York reserves the right to delay, modify or cancel the race as conditions or circumstances require.

(2) No person or vessel may enter, transit, or remain in the regulated area

during the effective period of regulation unless participating in the event or as authorized by the sponsor or Coast Guard patrol commander. The Coast Guard patrol commander will attempt to minimize any delays for commercial vessels transiting the area and will be monitoring channel 16 VHF.

(3) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(c) Effective Period. These regulations are effective from 12 p.m. through 4 p.m. on October 6, 1991.

Dated: September 27, 1991.

K.W. Thompson,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 91-24191 Filed 10-7-91; 8:45 am]

BILLING CODE 4910-14-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 91-11]

General Provisions—Registry of Documents Pertaining to Computer Shareware and the Donation of Public Domain Software

AGENCY: Copyright Office, Library of Congress.

ACTION: Interim regulations.

SUMMARY: The Copyright Office of the Library of Congress is issuing an interim regulation establishing a registry for documents pertaining to computer shareware and procedures for donating copies of public domain software. The Judicial Improvements Act of 1990, Public Law 101-650, 104 Stat. 5089 (1990) authorized the creation of these new systems of public records. The interim regulation governs the procedures for recording computer shareware documents and informs the public about donation of public domain software.

DATES: Interim rule effective October 8, 1991. Comments must be received on or before December 9, 1991.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail, to: Office of the General Counsel, U.S. Copyright Office, Library of Congress, Department 17, Washington, DC 20540.

If delivered by hand, copies should be brought to: Office of the General Counsel, Copyright Office, James Madison Memorial Building, room 407, First and Independence Ave., SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20559 (202) 707-8380.

SUPPLEMENTARY INFORMATION:

1. Background

On December 1, 1990, the President signed into law the Judicial Improvements Act of 1990, Public Law 101-650, 104 Stat. 5089 (1990) containing several provisions affecting the copyright law. Section 805 of that Act authorized the creation of a registry of documents "designated as pertaining to computer shareware." In addition, the act authorized the establishment of a voluntary system of deposit of public domain computer software for the benefit of the Machine-Readable Collections Reading Room of the Library of Congress. Section 805 of the Judicial Improvements Act was not codified in the copyright law, and therefore the provisions creating these new systems of records will not be codified in title 17.

The provision authorizing creating of the shareware registry accompanies several significant copyright amendments affecting computer software. Most important among these changes was the creation of a rental right for computer programs.

In considering these substantive changes in the copyright law with respect to computer programs, a concern was raised that changes in the law might have an unintended adverse impact on the shareware industry. Creation of the Computer Shareware Registry addresses this concern.

Shareware is a descriptive term applying to a unique way of marketing copyrighted computer programs. Under a shareware system of marketing, the copyright owner of the computer program permits wide distribution of disks embodying the program in order to allow potential users the opportunity for testing and review. The licensing terms extended to distributors of the disks vary. If a person who has received a disk embodying the program decides to use the software, then that person is required to register the use with the author and pay a registration fee. Authors obtain their income through these registration fees, and, in general, the registration fees are lower than the purchase price for a similar program through commercial channels.

The shareware system of marketing software is an increasingly popular way for authors of computer software to enter the software market. The Computer Shareware Registry is intended as a means for notifying the public of the licensing terms applicable to individual programs marketed on a shareware basis.

2. Nature of the Computer Shareware Registry

With certain minor modifications, the Computer Shareware Registry is patterned after the Copyright Act's section 205 recordation system, title 17 U.S.C. Only documents clearly designated as "Documents Pertaining to Computer Shareware" will be recorded in the Computer Shareware Registry. Documents not so designated will be treated as section 205 recordations, even if they involve computer programs marketed on a shareware basis. The legal effect of recording a document in the Computer Shareware Registry is at the discretion of the courts.

The Copyright Office intends to process Computer Shareware Registry documents in a system separate from ordinary section 205 copyright documents. The catalog records of shareware documents will not be found by searching the Copyright Office History Documents (COHD) files.

The creation of the Computer Shareware Registry does not change fundamental copyright principles applying to copyrighted computer programs generally. The Copyright Office strongly urges shareware authors to register their copyright claims in their programs through the usual procedures. Only through prompt registration can authors be assured of statutory damages and attorney's fees under section 412 of title 17. Participation in the Computer Shareware Registry is not a substitute for registration of the claim to copyright.

Additionally, documents transferring ownership of the rights under copyright of programs marketed on a shareware basis should be recorded under section 205 rather than solely in the Computer Shareware Registry. For example, if a commercial publisher purchases the rights under copyright to shareware program from the author, the document transferring ownership of rights should be recorded under the section 205 recordation system. In addition, security interests, wills, and bequests regarding programs marketed as shareware should be recorded under section 205. Timely recordation pursuant to 17 U.S.C. 205 is necessary to be assured of constructive

notice effect against a subsequent bona fide purchaser of the same rights.

An author or copyright owner of computer shareware may, of course, record both under 17 U.S.C. 205 and in the Computer Shareware Registry by fulfilling the different requirements of each recordation system and by paying the recording fees of each.

In order to simplify procedures for the public and the Copyright Office, the Office is specifying in the regulation that photocopies of documents or other facsimile reproductions should be submitted rather than original documents. Photocopies or facsimile reproductions will not be returned. If an original document is submitted by mistake, it will not be returned unless specifically requested by the sender.

The Office also encourages the submission of a machine-readable copy of the document in ASCII text format on an IBM–PC compatible disk, in addition to the photocopy or facsimile reproduction.

3. Donation of Public Domain Software

Copyright is claimed in most computer shareware programs, and they are subject to mandatory deposit under section 407 of title 17, U.S.C. if the program is published in the United States. The law passed by Congress as Public Law 101–650 contains another provision which has the purpose of encouraging donations of public domain software as a gift to the collections of the Machine-Readable Collections Reading Room of the Library of Congress. Persons who believe that selection of certain public domain software by the Library of Congress would serve important national preservation purposes are encouraged to donate software. Whether or not the software is added to the collections is determined solely by the Library of Congress. In order to assist the staff of the Library in evaluating the appropriateness of the deposit for accession to the collections, we request that as much information as possible about the software be included in the submission. The regulations specify the conditions for acceptance of a donation.

4. Regulatory Flexibility Act

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress, and is a part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (Title 5, chapter 5 of the U.S. Code, subchapter II and chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[1]

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant impact on small businesses.

List of Subjects in 37 CFR Part 201

Computer shareware registry; Computer programs copyright.

Interim Regulations

In consideration of the foregoing, the Copyright Office amends part 201 of 37 CFR, chapter II in the manner set forth below.

PART 201—[AMENDED]

1. The authority citation for part 201 continues to read as follows:

Authority: Section 702, 90 Stat. 2541; 17 U.S.C. 702; § 201.26 is also issued under Public Law 101–650, 104 Stat. 5089, 5136–37.

2. A new § 201.26 is added as follows:

§ 201.26 Recordation of Documents Pertaining to Computer Shareware and Donation of Public Domain Computer Software.

(a) *General.* This section prescribes the procedures for submission of legal documents pertaining to computer shareware and the deposit of public domain computer software under section 805 of Public Law 101–650, 104 Stat. 5089 (1990). Documents recorded in the Copyright Office under this regulation will be included in the Computer Shareware Registry. Recordation in this Registry will establish a public record of licenses or other legal documents governing the relationship between copyright owners of computer shareware and persons associated with the dissemination or other use of computer shareware. Documents transferring the ownership of some or all rights under the copyright law of computer software marketed as shareware and security interests in such software should be recorded under section 205 of title 17, as implemented by § 201.4 of these regulations.

(b) *Definitions.* (1) The term *computer shareware* is accorded its customary meaning within the software industry. In general, shareware is copyrighted software which is distributed with relatively few restrictions for the purpose of testing and review, subject to the condition that payment to the copyright owner is required after a person who has secured a copy decides to use the software.

(2) A *document designated as pertaining to computer shareware* means licenses or other legal documents governing the relationship between copyright owners of computer shareware and persons associated with the dissemination or other use of computer shareware.

(3) *Public domain computer software* means software which has been publicly distributed with an explicit disclaimer of copyright protection by the copyright owner.

(c) *Forms.* The Copyright Office does not provide forms for the use of persons recording documents designated as pertaining to computer shareware or for the deposit of public domain computer software.

(d) *Recordable Documents.* (1) Any document clearly designated as a "Document Pertaining to Computer Shareware" and which governs the legal relationship between owners of computer shareware and persons associated with the dissemination or other use of computer shareware may be recorded in the Computer Shareware Registry.

(2) Submitted documents must be a legible photocopy or other legible facsimile reproduction of a document containing the signature of the copyright owner of the computer shareware. Original documents should not be submitted.

(3) The photocopies or facsimile reproductions will not be returned. If an original document is submitted by mistake, it will not be returned unless specifically requested by the sender.

(4) The Copyright Office encourages the submission of a machine-readable copy of the document in the form of an IBM–PC compatible disk, in addition to the photocopy or facsimile reproduction.

[1] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e. "all actions taken by the Register of Copyrights under this title (17)," except with respect to the making of copies of copyright deposits). (17 U.S.C. 706(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA–FOIA requirements.

(e) *Fee.* For a document covering no more than one title, the basic recording fee is $20. An additional charge of $10.00 is made for each group of not more than 10 titles. For these purposes the term "title" refers to each computer shareware program covered by the document.

(f) *Date of recordation.* The date of recordation is the date when all of the elements required for recordation, including the prescribed fee have been received in the Copyright Office. After recordation of the statement, the sender will receive a certificate of record from the Copyright Office. The submission will be retained and filed by the Copyright Office, and may be destroyed at a later date after preparing suitable copies, in accordance with usual procedures.

(g) *Donatin of public domain computer software.* (1) Any person may donate a copy of public domain computer software for the benefit of the Machine-Readable Collections Reading Room of the Library of Congress. Decision as to whether any public domain computer software is suitable for accession to the collections rests solely with the Library of Congress. Materials not selected will be disposed of in accordance with usual procedures, including transfer to other libraries, sale, or destruction. Donation of public domain software may be made regardless of whether a document has been recorded pertaining to the software.

(2) In order to donate public domain software, the following conditions must be met:

(i) The copy of the public domain software must contain an explicit disclaimer of copyright protection from the copyright owner.

(ii) The submission should contain documentation regarding the software. If the documentation is in machine-readable form, a print-out of the documentation should be included in the donation.

(iii) If the public domain software is marketed in a box or other packaging, the entire work as distributed, including the packaging, should be deposited.

(iv) If the public domain software is copy protected, two copies of the software must be submitted.

(3) Donations of public domain software with an accompanying letter of explanation must be sent to the following address: Gift Section, Exchange & Gift Division, Library of Congress, Washington, DC 20540.

Dated: September 23, 1991.

Ralph Oman,

Register of Copyrights.

Approved:

James H. Billington,

The Librarian of Congress.

[FR Doc. 91-23964 Filed 10-7-91; 8:45 am]

BILLING CODE 1410-07-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA-13-1-5297; A-1-FRL-4011-6]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Amendment to the RACT Determination for Erving Paper Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: A final rulemaking was published approving a reasonably available control technology (RACT) determination for Erving Paper Mills (Erving) of Erving, Massachusetts on March 20, 1991 (56 FR 11675). Shortly thereafter, Erving brought forward concerns it had about ambiguities in certain provisions of the plan approval defining RACT. On April 22, 1991, Massachusetts submitted a clarifying amendment to the plan approval for Erving as a SIP revision. The intended effect of this action is to amend a source-specific RACT determination made by Massachusetts in accordance with commitments specified in its Ozone Attainment Plan approved by EPA on November 9, 1983 (48 FR 51480). This action is being taken in accordance with section 110 and part D of the Clean Air Act.

EFFECTIVE DATE: This action will become effective December 9, 1991, unless notice is received within 30 days that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, (617) 565-3248; FTS 835-3248.

SUPPLEMENTARY INFORMATION: On October 25, 1990, the Massachusetts Department of Environmental Protection (DEP) submitted a final plan approval issued to Erving Paper Mills as a formal state implementation plan (SIP) revision. The plan approval established and required reasonably available control technology (RACT) to control volatile organic compound (VOC) emissions from Erving Paper Mills in Erving, Massachusetts. That SIP revision consisted of a plan approval effective October 16, 1990.

A final rulemaking was published approving RACT for Erving Paper Mills (Erving) on March 20, 1991 (56 FR 11675). Shortly thereafter, Erving brought forward concerns it had about the way certain provisions of the plan approval defining RACT were written. Erving did not submit adverse comments on the rulemaking action. This action addresses those concerns.

Erving Paper Mills manufactures paper (tissues and napkins) from 100 percent recycled paper stock. Erving uses VOC for the removal of water insoluble glues and impurities from the felts and screens of its paper making machines. The glues and impurities which are not removed by mechanical filters sometimes end up on the felts or screen of a paper making machine. The presence of these impurities on the felts or screens displaces the paper fibers which would have otherwise been extruded and causes holes in the finished paper. If this occurs, the paper produced is of an unacceptable quality and the felts and/or screens must be cleaned using a VOC.

On April 22, 1991, the Massachusetts DEP submitted an amendment to the October 16, 1990 plan approval for Erving. This amendment, dated and effective April 16, 1991, revised two conditions of the original plan approval and added an additional condition. In summary, the revised plan approval now clarifies that the use of stock cleaning devices is required only on those lines which use contaminated paper stock. Erving was concerned that the plan approval could be misinterpreted to require all production to stop if the stock cleaning devices

failed. This was never the intention of the Massachusetts DEP. The stock cleaning devices serve no purpose when clean paper stock is used. Furthermore, since it is unnecessary to clean the felts and screens with VOC when clean paper stock is used, limitations of any kind for VOC control are unnecessary.

EPA is approving this SIP revision without prior proposal because the Agency views this as noncontroversial and anticipates no adverse comments. The revision will not lead to greater VOC emissions, and is consistent with the requirements of the 1990 Clean Air Act Amendments. This action will be effective 60 days from the date of this **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on December 9, 1991.

Final Action

EPA is approving this amendment to the plan approval submitted as a SIP revision request for Erving Paper Mills. The amendment to the plan approval, dated and effective April 16, 1991, clarifies the requirements of RACT for Erving Paper Mills, a manufacturer of recycled paper in Erving, Massachusetts.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225).

The Office of Management and Budget has exempted this action from the requirements of section 3 of Executive Order 12291.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 9, 1991. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the Commonwealth of Massachusetts was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: September 12, 1991.

Julie Belaga,

Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1120 is amended by adding paragraph (c)(91) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(91) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on April 22, 1991 which clarify the requirements of RACT to control volatile organic compound emissions from Erving Paper Mills in Erving, Massachusetts.

(i) *Incorporation by reference.* (A) Letter from the Massachusetts Department of Environmental Protection dated April 22, 1991 submitting a revision to the Massachusetts State Implementation Plan.

(B) A conditional final plan approval amendment issued by the Massachusetts Department of Environmental Protection to Erving Paper Mills dated and effective April 16, 1991. This amended conditional plan approval amends the October 16, 1990 conditional plan approval incorporated at paragraph (c)(90) of this section.

3. Table 52.1167 is amended by adding the following entry to the end of the state citation for "310 CMR 7.18(17)" to read as follows:

§ 52.1167 EPA-approved Massachusetts State regulations.

* * * * *

TABLE 52.1167.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120 (c)	Comments/unapproved sections
*	*	*	*	*	*	*
310 CMR 7.18(17)	RACT	4/22/90	October 8, 1991	[*FR* citation from published date].	91	RACT amendment for Erving.
*	*	*	*	*	*	*

[FR Doc. 91-24070 Filed 10-07-91; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6886

[WY-930-4214-10; WYW 115104]

Withdrawal of National Forest System Land for Snowy Range Recreation Area; WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 21,636.29 acres of National Forest System land in the Medicine Bow National Forest from location and entry under the United States mining laws for a period of 20 years for the Forest service to protect the unique topographic characteristics and recreational values of the Snowy Range Area. The land has been and will remain open to such forms of disposition as may by law be made of National Forest System land and to mineral leasing.

EFFECTIVE DATE: October 8, 1991.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM, Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307-775-6115.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws, to protect the unique topographic characteristics and recreational values of the Snowy Range Area:

Sixth Principal Meridian

Medicine Bow National Forest

T. 16 N., R. 79 W.,
Sec. 2, lots 2 to 7, inclusive, and lots 10 to 15, inclusive, N½SW¼, SW¼SW¼, and NW¼SE¼;
Secs. 3 to 9, inclusive;
Sec. 10, NW¼, and W½SW¼;
Sec. 11, N ½NW¼NW¼;
Sec. 15, NW¼NW¼;
Sec. 16, N½;
Sec. 17, N½NE¼, N½NE¼NW¼, SW¼NE¼NW¼, W½NW¼, and NW¼SW¼;
Sec. 18;
Sec. 19, lots 1 and 2, N½N½ and S½S½ of lot 3, NW¼NE¼, and NE¼NW¼.
T. 16 N., R. 80 W.,
Sec. 1, lots 1 and 2, lots 7 to 10, inclusive, lots 14 to 16, inclusive, NE¼SW¼, S½SW¼, and SE¼;
Sec. 11, E½SE¼;
Sec. 12;
Sec. 13;
Sec. 14, E½NE¼, SW¼NE¼, SE¼SW¼, and SE¼;
Sec. 23, E½, E½NW¼, SW¼NW¼, and NE¼SW¼;
Sec. 24, N½, SW¼, NE¼NE¼NE¼SE¼, W½E½NE¼SE¼, W½NE¼SE¼, SE¼SE¼NE¼SE¼, W½SE¼, N½SE¼ SE¼, and SE¼SE¼SE¼;
Sec. 25, NW¼NE¼, NW¼, and NW¼SW¼;
Sec. 26, NE¼, NE¼SE¼.
T. 17 N., R. 79 W.,
Sec. 8, SE¼SW¼, and SE¼;
Sec. 15, W½NW¼, SE¼NW¼, SW¼, W½SE¼, and SE¼SE¼;
Sec. 16;
Sec. 17, lot 1, W½NE¼, SE¼NE¼, E½NW¼, SW¼NW¼, and S½;
Sec. 18, E½SE¼;
Sec. 19, E½NE¼, and NE¼SE¼;
Secs. 20, 21, and 22;
Sec. 23, SE¼NE¼, W½E½, W½, and E½SE¼;
Sec. 24, SW¼NW¼, and NW¼SW¼;
Sec. 26, W½E½, and W½;
Secs. 27, 28, and 29;
Sec. 31, lot 4, SE¼NE¼, E½SW¼, and SE¼;
Sec. 32, lots 1 and 2, N½NE¼, SW¼NE¼, S½NW¼, SW¼, W½SE¼, and SE¼SE¼;
Secs. 33, 34, and 35;
Sec. 36, NW¼, and W½SW¼.

The area described contains 21,636.29 acres in Albany and Carbon Counties.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the National Forest System land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of the order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: September 26, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-24147 Filed 10-7-91; 8:45 am]
BILLING CODE 4310-22-M

43 CFR Public Land Order 6888

[AK-932-4214-10; AA-3060]

Withdrawal of National Forest System Land for the Juneau Falls Recreation Area; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws approximately 320 acres of National Forest System land from surface entry and mining for a period of 20 years for the Forest Service to protect the Juneau Falls Recreation Area. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: October 8, 1991.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976; 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from settlement, sale, location, or entry under the public land laws, including the United States mining laws (30 U.S.C. ch. 2) (1988), but not from leasing under the mineral leasing laws, to protect the recreational values of the Juneau Falls Recreation Area:

Seward Meridian

Chugach National Forest

T. 5 N., R. 4 W., unsurveyed,
Sec. 13, SE¼SW¼, SW¼SE¼;
Sec. 24, W½NE¼, E½NW¼, NE¼SW¼, NW¼SE¼.

The area described contains approximately 320 acres.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System land under lease, license, or permit, or governing the disposal of its mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: October 1, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-24168 Filed 10-7-91; 8:45 am]

BILLING CODE 4310-JA-M

FEDERAL MARITIME COMMISSION

46 CFR Part 504

[Docket No. 91-28]

Procedures for Environmental Policy Analysis

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission amends its Procedures for Environmental Policy Analysis, which set forth requirements for environmental analysis of Commission actions under the National Environmental Policy Act of 1969. Specifically, the amendment categorically excludes from the requirement for an environmental analysis actions concerning receipt of surety bonds submitted by non-vessel-operating common carriers ("NVOCCs").

EFFECTIVE DATE: November 7, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary,Federal Maritime Commission 1100 L Street, NW., Washington, DC 20573-0001 (202) 523-5725.

SUPPLEMENTARY INFORMATION: The Commission's Procedures for Environmental Policy Analysis (46 CFR part 504) specify the types of environmental analyses required for Commission actions under the National Environmental Policy Act of 1969. Actions having a potential for environmental impact as defined in § 504.2(c) are subjected to environmental assessments that result in either findings of no significant impact (§ 504.6) or environmental impact statements (§ 504.7). Actions with little or no potential for environmental impact are categorically excluded from the requirements for environmental assessment (§ 504.4).

Section 504.4 lists routine types of Commission actions that are excluded from the requirements for analysis. The activities covered by categorical exclusion do not individually or collectively have significant effects upon the quality of the human environment, because they are purely ministerial, or because they do not significantly increase or decrease air, water or noise pollution or use of fossil fuels, recyclables or energy.

On January 15, 1991, (56 FR 1493) the Commission published an Interim Rule to implement the NVOCC Amendments of 1990, section 710 of Public Law 101-595. This Rule contains, among other things, provisions for the filing of NVOCC surety bonds and designations of resident agents for service of process (for foreign-domiciled NVOCCs) in an NVOCC's tariff. These actions appear to have no potential for environmental impact. Accordingly, on June 19, 1991, the Commission published a proposed rulemaking in the **Federal Register** (56 FR 28128) to add such matters to the list of actions excluded from environmental analysis under § 504.4.

No comments were submitted about the proposed rule. The Commission therefore has determined to adopt the proposed rule as final, with one change. We have deleted the specific reference to designations of resident agents because such actions are already included in subparagraph (5) of § 504.4(a).

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291 dated February 17, 1991, it has nonetheless reviewed the rule in terms of this Order and has determined that this final rule is not a "major rule" because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small governmental organizations.

The Paperwork Reduction Act, 44 U.S.C. 3501-3520, does not apply to this Rulemaking because the amendment to part 504 of title 46, Code of Federal Regulations, does not impose any additional reporting or recordkeeping requirements or change the collection of information from members of the public which require the approval of the Office of Management and Budget.

Lists of Subjects in 46 CFR Part 504

Environmental impact statements.

Therefore, pursuant to 5 U.S.C. 553, 42 U.S.C. 4332(2)(b), section 710 of Public Law 101-595 and 46 U.S.C. app. 1716, the Federal Maritime Commission amends part 504, title 46, Code of Federal Regulations, as follows:

1. The authority citation for Part 504 continues to read as follows:

Authority: 5 U.S.C. 552, 553; Sec. 21 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 820 and 841a); secs. 13 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1712 and 1716); sec. 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(b)) and sec. 362(b) of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6362).

2. Section 504.4 is amended by adding a new paragraph (3), reading as follows:

§ 504.4 Categorical exclusions.

(a) * * *

(3) Receipt of surety bonds submitted by non-vessel-operating common carriers.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-24117 Filed 10-7-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 74, 78

[MM Docket No. 90-500, FCC 91-293]

Broadcast Auxiliary and Cable TV Relay Services; Definition of Congested Area

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission terminates this proceeding with minor clarifying amendments to 47 CFR 74.641 and 78.105. These amendments are made in response to a Petition for Rulemaking filed by the Society of Broadcast Engineers (SBE), asking that the Commission require broadcast auxiliary and cable relay microwave stations located within Metropolitan Statistical Areas (MSAs) to employ Category A antenna systems. Category A antennas are more effective than either Category B antennas or those microwave antennas in common use during earlier years, at reducing interference. The comments received in response to the Notice of Proposed Rule Making (55 FR 48260, November 20, 1990) indicate that the Commission's current rules and procedures, with minor changes, will adequately resolve potential problems

in congested areas, and avoid unduly taxing operator and Commission resources. Finally, the Commission amends 47 CFR 74.641 and 78.105 to extend the October 1, 1991, deadline for licensees who do not comply with these Rule Sections to install an antenna that complies with the rules, to April 1, 1992. This action is taken in recognition that some licensees have delayed purchasing a Category A or Category B antenna pending resolution of this rulemaking proceeding.

EFFECTIVE DATE: November 19, 1991.

FOR FURTHER INFORMATION CONTACT: Hank VanDeursen, Mass Media Bureau, Policy and Rules Division, (202) 632-9660.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in MM Docket No. 90-500, adopted September 23, 1991, and released September 23, 1991.

The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, at (202) 452-1422, 1919 M Street, NW., room 246, Washington, DC 20554.

Synopsis of Report and Order

1. This Report and Order responds to the Petition for Rulemaking filed by SBE on February 27, 1990, which asked that the Commission require broadcast auxiliary and cable relay microwave stations located within MSAs to employ high-performance Category A antenna systems. The Commission's Rules, as of October 1, 1991, require the use of either a Category B or a Category A microwave antenna. A Category B antenna represents an improvement in technical specifications over microwave antennas of earlier years and is intended for general use in the broadcast auxiliary and cable relay services. A Category A antenna delivers better performance than a Category B antenna (principally in the form of narrower beamwidth) and is useful in congested areas when use of a Category B antenna might preclude the authorization of new service. SBE's petition sought to more clearly define what comprises a "congested area."

2. The record in this proceeding indicates that interference and preclusion problems in the referenced services have only infrequently required Commission intervention, and have been satisfactorily resolved on a local, case-by-case basis. Further, the Commission finds that a "Four-Level Safety Net" exemption procedure that SBE proposed in its comments is unnecessary at this time. Sections 74.641 and 78.105 of the Rules currently require use of Category B antennas in non-congested areas, but provide specifically that applicants may be required to upgrade the antenna of an existing station if such action would resolve an interference or preclusion situation. Thus, the current rules appear sufficient to resolve potential problems without adopting SBE's proposal. Requiring applicants to make showings to obtain exemptions appears unnecessary when normal frequency coordination procedures, in connection with the Commission's application processing should reveal situations where proposed facilities could be precluded by continuing use of Category B antennas.

3. Through the action taken in this Report and Order, the Commission aims to avoid requiring unnecessary upgrades that would burden stations either with the cost of the new antenna and its installation, or with the expense of preparing a waiver request. It should also avoid burdening the Commission's processing staff with a requirement to respond to each such waiver request.

4. The Commission, however, does make minor adjustments to 47 CFR 74.641 and 78.105, to more clearly indicate, as requested by SBE, what comprises a "congested" area. The same two Rule Sections are also amended to extend to April 1, 1992, the October 1, 1991, deadline for licensees who do not comply with § 74.641 or § 78.105 of the Commission's Rules, to install an antenna that does comply with the Rule. These final amendments are enacted because some licensees have delayed purchasing a Category A or Category B antenna pending resolution of this rulemaking proceeding.

Final Regulatory Flexibility Analysis Statement

5. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that this decision will not have a significant impact on a substantial number of small entities because it makes only minor changes in the Commission's Rules. It does extend to April 1, 1992, the October 1, 1991, deadline for licensees who do not comply with 47 CFR 74.641 or 78.105 to install an antenna that does comply with the Rules.

6. The Secretary shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*, (1981)).

7. Accordingly, *it is ordered that*, pursuant to sections 4(i), (j), and 303 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), (j), and 303 (1982), effective November 19, 1991, sections 74.641 and 78.105 of the Commission's Rules are amended as set forth below.

8. *It is further ordered that* this proceeding *Is terminated.*

List of Subjects

47 CFR Part 74

Television broadcasting.

47 CFR Part 78

Cable television.

Amendatory Text

47 CFR parts 74 and 78 are amended as follows:

PART 74—[AMENDED]

9. The authority citation for parts 74 and 78 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

10. Section 74.641 is amended by revising the note that follows the table in paragraph (a)(1) and by revising paragraph (b) introductory text to read as follows:

§ 74.641 Antenna systems.

(a) * * *

(1) * * *

Note: Stations must employ an antenna that meets the performance standards for Category B. In areas subject to frequency congestion, where proposed facilities would be precluded by continued use of a Category B antenna, a Category A antenna must be employed. The Commission may require the use of a high performance antenna where interference problems can be resolved by the use of such antennas.

* * * * *

(b) Any fixed station licensed pursuant to an application accepted for filing prior to October 1, 1981, may continue to use its existing antenna system, subject to periodic renewal until April 1, 1992. After April 1, 1992, all licensees are to use antenna systems in conformance with the standards of this section. TV auxiliary broadcast stations are considered to be located in an area subject to frequency congestion and must employ a Category A antenna when:

* * * * *

PART 78—[AMENDED]

11. Section 78.105 is amended by revising the note that follows the table

in paragraph (a)(1) and by revising paragraph (b) introductory text to read as follows:

§ 78.105 Antenna systems.

(a) * * *

(1) * * *

Note: Stations must employ an antenna that meets the performance standards for Category B. In areas subject to frequency congestion, where proposed facilities would be precluded by continued use of a Category B antenna, a Category A antenna must be employed. The Commission may require the use of a high performance antenna where interference problems can be resolved by the use of such antennas.

* * * * *

(b) Any fixed station licensed pursuant to an application accepted for filing prior to October 1, 1981, may continue to use its existing antenna system, subject to periodic renewal until April 1, 1992. After April 1, 1992, all licensees are to use antenna systems in conformance with the standards of this section. CARS stations are considered to be located in an area subject to frequency congestion and must employ a Category A antenna when:

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-24099 Filed 10-7-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 173

[Docket No. RHMT-1; Notice 1]

RIN 2130-AA66

Tank Car Air Brake Equipment Support Attachments

AGENCY: Federal Railroad Administration (FRA), Department of Transportation.

ACTION: Final rule.

SUMMARY: FRA is amending part 173 of the Hazardous Materials Regulations, 49 CFR part 173, to conform to the mandate of section 19 of the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA) (Pub. L. 101-615), which, effective July 1, 1991, prohibits the transportation in commerce of all hazardous materials in tank cars with air brake equipment support attachments welded directly to the shell.

EFFECTIVE DATE: This final rule is effective October 8, 1991.

FOR FURTHER INFORMATION CONTACT: Phil Olekszyk, Deputy Associate Administrator for Safety, RRS-2, FRA, 400 Seventh Street, SW., Washington, DC 20590 (Telephone 202-366-0897) or Thomas A. Phemister, Trial Attorney, Office of the Chief Counsel, RCC-30, FRA, 400 Seventh Street, SW., Washington, DC 20590 (Telephone 202-366-0635).

SUPPLEMENTARY INFORMATION: The HMTUSA amended the Hazardous Materials Transportation Act (49 U.S.C. app. 1801 *et seq.*) by adding a new section (section 119, Railroad Tank Cars, 49 U.S.C. app. 1817) prohibiting the use of railroad tank cars for the transportation in commerce of hazardous materials unless the air brake equipment support attachments comply with the standards for attachments set forth at §§ 179.100-16 and 179.200-19, title 49, Code of Federal Regulations, as in effect on November 16, 1990. The prohibition was effective in two phases: First, effective on the date of enactment of HMTUSA, was a prohibition against transporting Class A or B explosives and materials designed as toxic by inhalation, and, second, effective July 1, 1991, is a prohibition against transporting any hazardous material in a tank car with non-complying brake support attachments. Authority to implement this provision has been delegated from the Secretary of Transportation to the Administrator of the FRA.

Reinforcing pads are now required by the DOT Specifications for Tank Cars (49 CFR part 179) for new construction. The reinforcing pad requirement for newly built cars under the Research and Special Programs Administration's Docket HM-90, Specifications for Tank Cars, (36 FR 21346, November 6, 1971), prohibits directly welding any attachment to the tank shell if the weld will exceed six linear inches. The effect of the enactment of HMTUSA is to ensure that the brake equipment support attachments on all tank cars used for the transportation of hazardous materials meet the regulatory standard for welded attachments, whether the car was built before or after November of 1971.

The requirement grew out of accident experience and the realization that, if a directly welded attachment is broken off in a derailment, the shell may be torn open and the dangerous cargo released. The Miamisburg, Ohio derailment on July 8, 1986, is one illustration of the serious consequences possible from attaching the brake system support brackets directly to the tank shell. In that accident, the pipe attachment for the air brake system reservoir was torn off by the forces of the derailment and, according to the FRA Investigation Report, "left a circular tear in the inner tank shell about 8 inches in diameter, near the bottom center of the shell." (FRA Railroad Accident Investigation Report No. A-2-86, "The Baltimore and Ohio Railroad Company/Miamisburg, Ohio/July 8, 1986," p. 14.) The yellow phosphorus in the tank was exposed to the atmosphere through this and other tank breaches, caught fire, created very large clouds of smoke and fumes, and lead to the evacuation of an estimated 30,000 people.

The Association of American Railroads' Tank Car Committee, representing its railroad, tank car builder, and hazardous materials shipper membership, has a voluntary retrofit program in place to extend the §§ 179.100-16 and 179.200-19 standard to the cars in the fleet built before 1971. Current AAR data show that about 1,200 tank cars—none of them hauling hazardous materials—remain to be retrofitted. Thus, the goal of the statutory amendment has nearly been achieved voluntarily, but the statute and this regulation will prohibit the use of any non-retrofitted car in hazardous material service.

Public Participation

In this notice, FRA issues an amendment to the requirements for the qualification, maintenance, and use of tank cars for the transportation of hazardous materials. Because this amendment does no more than state a statutory change as a regulation, notice and comment procedures are "impracticable, unnecessary, or contrary to the public interest" within the meaning of section 4(a)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B).

As a matter of law, the provisions of this amendment are effective as of the date stated in HMTUSA, with or without an amendment to the Hazardous Materials Regulations (HMR). FRA is issuing this rule to conform the HMR to the statute to promote enforcement efficiency, as a matter of convenience and information for the regulated community, and to provide a ready reference for tank car requirements within the structure of the HMR; thus, the additional time necessary for notice and comment procedures would be contrary to the public interest.

For similar reasons, there is good cause for not publishing this rule at least 30 days before its effective date, as is ordinarily required by 5 U.S.C. 553(d). All interested parties have had notice of the relevant provisions of HMTUSA since its enactment on November 16,

1990, more than 30 days prior to the effective date of this rule (July 1, 1991).

Regulatory Impact

E.O. 12291 and DOT Regulatory Policies and Procedures

This final rule and policy statement have been evaluated in accordance with existing policies and procedures. They are considered to be non-major under Executive Order 12291. Because it involves a Congressional mandate and because this rule involves the safety of hazardous materials transportation in tank cars, it is considered significant under the DOT policies and procedures. (44 FR 11034; February 26, 1979.)

This rule will not have any direct or indirect economic impact because it mirrors a statutory requirement and does not alter an existing substantive or procedural regulation or standard of the regulated industry in such a way as to impose additional burdens. The cost of complying with existing substantive regulations and industry standards is not being increased. The rule merely contains a regulatory formulation of a statutory mandate. Accordingly, preparation of a regulatory evaluation is not warranted.

Regulatory Flexibility Act

FRA certifies that this rule will not have a significant economic impact on a substantial number of small entities. There are no direct or indirect economic impacts for small units of government, businesses, or other organizations.

Paperwork Reduction Act

There are no information collection requirements contained in this rule and policy statement.

Environmental Impact

FRA has evaluated this rule and policy statement in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act and related directives. This notice meets the criteria that establish this as a non-major action for environmental purposes.

Federalism Implications

This rule will not have a substantial effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

List of Subjects

49 CFR Part 173

Hazardous Materials Transportation, Packagings, Qualification of Tank Cars, Tank Cars.

Regulatory Text

In consideration of the foregoing, 49 CFR part 173 is amended as follows:

1. The authority citation for part 173 is revised to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1805, 1806, 1807, 1808, 1817; 49 CFR Part 1, unless otherwise noted.

2. In § 173.31, a new paragraph (a)(7) is added to read as follows:

§ 173.31 Qualification, maintenance, and use of tank cars.

(a) General qualifications for use.

* * * * *

(7) Effective July 1, 1991, no railroad tank car, regardless of its construction date, may be used for the transportation in commerce of any hazardous material unless the air brake equipment support attachments of such tank car comply with the standards for attachments set forth in §§ 179.100–16 and 179.200–19, as in effect on November 16, 1990.

* * * * *

(49 U.S.C. App. §§ 1803, 1804, 1808, 1817, §§ 1.49(s)(2) and 1.53, App. A to part 1)

Issued in Washington, DC on September 30, 1991, under authority delegated in 49 CFR part 1.

Gilbert E. Carmichael,

Administrator, Federal Railroad Administration.

[FR Doc. 91–23974 Filed 10–7–91; 8:45 am]

BILLING CODE 4910–06–M

Research and Special Programs Administration

49 CFR Part 195

[Docket No. PS–112; Amendment 195–45]

Transportation of Carbon Dioxide by Pipeline

September 10, 1991.

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final Rule; extension of time for compliance and response to petition of reconsideration.

SUMMARY: This final rule extends the time for compliance with the new requirements for existing carbon dioxide pipelines. This extension of time for compliance is done in response to a petition for reconsideration.

EFFECTIVE DATE: The effective date of the final rule establishing regulations for the transportation of carbon dioxide by pipeline published on June 12, 1991, in 56 FR 26922 remains July 12, 1991. Carbon dioxide pipelines that are placed into operation, relocated, replaced, or otherwise changed after the effective date must be in compliance with the regulations. However, the regulations have been revised so that carbon dioxide pipeline in existence on July 12, 1991, and not relocated, replaced or otherwise changed after that date, are not required to be in compliance with those requirements until July 12, 1992.

FOR FURTHER INFORMATION CONTACT: Cesar De Leon, (202) 366–1640 regarding the contents of this final rule; or the Docket Unit (202) 366–5646 regarding copies of this final rule or other information in the docket.

SUPPLEMENTARY INFORMATION: In a petition for reconsideration, the American Petroleum Institute (API) requested a change in the effective date of July 12, 1991, for the final rule "Transportation of Carbon Dioxide by Pipeline" (56 FR 26922; June 12, 1991).

API requested the extension because the final rule applied to more pipeline facilities than it had anticipated from the language in the NPRM. API notes that the final rule makes "more segments of 2" to 8" diameter laterals and injection lines" subject generally to compliance with requirements of 49 CFR part 195. These pipelines are located in the production fields. API argues that compliance with the operations and maintenance requirements of part 195 will require significant investments of time, effort, and training. Some of the more labor and time intensive requirements include: (1) Development or revision of operations, maintenance, and emergency manuals and procedures; (2) training of engineering, operations, maintenance, and construction personnel regarding DOT-specified procedures; (3) retrieval and organization of required records, development of maps, and inventory of pipeline and facilities. API states that 30 days from the date of issue of the final rule is inadequate time for compliance and requests an extension to July 12, 1992.

Upon reconsideration, RSPA agrees that the development of procedural manuals that meet the requirements of part 195, the conduct of adequate training for pipeline personnel, and the implementation of other operation and maintenance requirements of part 195 may, without advance planning, take more than the 30 days which the final rule provided. Thus to the extent that the operators of carbon dioxide lines

had not anticipated the application of the regulations to certain pipeline facilities, they may be unable to achieve compliance in the 30 days provided. Accordingly, RSPA is extending the time for compliance with the operations and maintenance requirements for existing lines for one year, until July 12, 1992.

Although API does not explicitly address the issue, the equivalent argument as to the difficulties of bringing existing lines into compliance does not apply to those pipelines not yet placed in service. Accordingly, no change is made with respect to the compliance date for those new facilities.

This regulation was not enforced by RSPA while this petition was under consideration.

Impact Assessment

These regulations extend the time for compliance with the operations and maintenance requirements for existing lines for one year so that there is no additional cost to comply with these rules. This final rule is considered to be non-major under Executive Order 12291, and not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). This extension does not warrant preparation of a Regulatory Evaluation. Also, based on the facts available concerning the impact of this final rule, I certify under section 606 of the Regulatory Flexibility Act that it does not have a significant impact on a substantial number of small entities. This action has been analyzed under the criteria of Executive Order 12612 (52 FR 41685) and found not to warrant preparation of a Federalism Assessment.

In consideration of the foregoing, RSPA amends title 49 of the Code of Federal Regulations part 195 to read as follows:

PART 195—[AMENDED]

1. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. App. 2001 *et seq;* 49 CFR 1.53.

2. Section 195.1 is amended by adding paragraph (c) to read as follows:

§ 195.1 Applicability

* * * * *

(c) Except for carbon dioxide pipelines that are relocated, replaced, or otherwise changed, operators with carbon dioxide pipelines in existence on July 12, 1991, need not comply with this part until July 12, 1992.

Issued in Washington, DC on October 1, 1991.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 91-24127 Filed 10-7-91; 8:45 am]

BILLING CODE 4910-60-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 90-3; Notice 2]

RIN 2127-AA27

Federal Motor Vehicle Safety Standards Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: Standard No. 121, *Air Brake Systems*, specifies requirements for the performance of trailer pneumatic brake systems in the event of pneumatic system failure. This final rule deletes the requirement for a separate reservoir capable of releasing the parking brakes. Under this rule, air from the tractor supply lines may be used instead of air from such a reservoir. This rule also adds requirements for a minimum compressor cut-in pressure for trucks and buses, for the retention of a minimum level of pressure in a trailer's supply line in the event of pneumatic failure, and for the prevention of automatic application of trailer parking brakes while the minimum trailer supply line pressure is maintained. Today's notice will encourage the use of more effective trailer braking systems and simplify the maintenance of those systems. Finally, the agency has decided not to adopt certain other proposed requirements because there was insufficient justification for their adoption and because they might have interfered with the implementation of other safety features.

DATES: The amendments made by the final rule to the Code of Federal Regulations are effective October 8, 1992. Optional compliance is permitted effective November 7, 1991. Petitions for reconsideration of this final rule must be filed by November 7, 1991.

ADDRESSES: Petitions for reconsideration of this final rule should refer to the docket and notice numbers set forth above and be submitted to: Administrator, room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. It is requested, but not required, that 10 copies be submitted.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC (202-366-5274).

SUPPLEMENTARY INFORMATION:

Background

Air-braked trailers have two types of brakes: Service brakes used for normal stopping in traffic and parking brakes used both for parking and stopping the trailer in the event of a breakaway. The parking brakes may also be used to help stop the vehicle in the event of a loss of trailer service braking capability. The service brakes are applied by the driver's actuating a foot-controlled treadle valve. This transmits a pressure signal, proportional to the foot pressure on the treadle valve, via the control line to open the service relay valve(s). The opening of the relay valve(s) allows air from the brake reservoirs to pressurize the brake chambers (to a level that is proportional to the pressure in the control line), applying the brakes in proportion to the foot pressure on the treadle valve. The pressure in the brake reservoirs is supplied via the brake supply line.

Manual application of the parking brakes occurs when the driver actuates a hand-operated parking control valve, venting the supply line. The venting of the supply line results in application of the parking brakes by means of spring pressure or air pressure. Automatic application of the parking brakes can occur in two situations. First, if the pressure in the trailer supply line falls below a certain level, tractor valving closes and vents the supply line to the trailer. The venting of the trailer supply line results in application of the parking brakes. Second, if the trailer should break away from the tractor, the venting due to breaking of the trailer supply line hose results in application of the parking brakes.

First Notice of Proposed Rulemaking (July 1981)

On July 23, 1981, NHTSA published in the **Federal Register** (46 FR 37952) a notice of proposed rulemaking (NPRM) to amend Standard No. 121, *Air Brake Systems*, by deleting the requirement that trailers have a separate reservoir capable of releasing the parking brakes (section S5.2.1.1). The rulemaking was initiated in response to a petition for rulemaking submitted by Berg Manufacturing Company.

The purpose of the separate reservoir requirement was to provide a means for releasing the parking brakes once they had been applied. However, the agency believed that this purpose could be satisfactorily met by other means.

Several commenters opposed the proposal. They expressed concern that it would permit trailer parking brake systems that would place increased demands on the tractor air system for releasing the parking brakes; not warn the driver in the event of trailer brake drag and brake fade; not be compatible with earlier systems if they were intermixed in doubles and triples combinations; and utilize a single reservoir on tandem axle trailers, thereby resulting in degraded performance.

NHTSA conducted research to evaluate those issues. The research looked at designs currently in use on trailers and ones which manufacturers indicated would likely be sold if the July 1981 proposal were adopted as a final rule. The results of that research are contained in a report entitled "NHTSA Heavy Duty Vehicle Research Program—Report Number 3: Evaluation of Parking and Emergency Pneumatic Systems on Air Braked Trailers," May 1985 (DOT HS 806 757).

The agency's research program identified several safety features that would be desirable for pneumatic brake systems on trailers. Those features are discussed on pages 64–68 of the above-referenced report. While none of the systems tested exhibited all of the desirable features, it appeared that only minor changes would be required in those systems to provide the features.

Second Notice of Proposed Rulemaking (February 1990)

On February 8, 1990, the agency published in the **Federal Register** a NPRM that superseded the July 1981 NPRM (55 FR 4453). In the 1990 NPRM, NHTSA proposed to amend Standard No. 121 to require some of the safety features identified by its research. As part of that action, the agency again proposed to delete the requirement for a separate reservoir. The agency also proposed to require a low pressure warning system that would indicate whether the pressure in any of a trailer's service brake reservoirs was below 60 pounds per square inch (psi). The proposed warning system would utilize a warning light mounted on the trailer. To avoid possible inadvertent activation of the trailer low pressure warning system, the agency proposed to require the air compressor to begin functioning whenever the air pressure fell below 85 pounds per square inch (psi). Finally, the agency proposed to require that no single leakage type failure result in a loss of service braking capability at wheels which contribute more than 50 percent of the load-carrying capacity of the axles of the trailer. To meet the proposed requirement, manufacturers would need to provide a split service braking system.

NHTSA proposed to make the amendment effective one year after publication of the final rule in the **Federal Register**. The agency believed that a one-year period would enable manufacturers to redesign their vehicles to meet the proposed requirements. NHTSA proposed to permit optional compliance effective 30 days after publication to facilitate the earlier redesign of some vehicles.

NHTSA received 21 comments in response to the NPRM. All of these comments were considered in connection with the final rule, and the most significant are discussed below.

Summary of Comments on the Proposed Rule and of Final Rule

Eight commenters expressed support for the agency's proposal to delete the requirement for a protected reservoir. No comments in opposition to this proposal were received. After reviewing the comments, NHTSA has decided to delete the requirement for a protected reservoir from Standard No. 121.

One commenter supported the proposal to require a trailer low pressure warning system. Twelve commenters opposed the proposed requirement. NHTSA has decided not to adopt this proposed requirement. The agency has determined that the proposed warning system, because of its potential cost, commercial unavailability (i.e., there are no flashers available with the necessary flash rate or reliability), and design restrictiveness (i.e., other methods to improve the trailer low pressure warning system could be precluded), would not be practicable. In addition, the comments confirmed the agency's belief that the proposed system might be a potential distraction for the vehicle's driver and would place an additional load on the stop lamp circuit of the tractor trailer. This could tax the existing circuit and could limit its use for other safety features, such as an antilock braking system.

NHTSA has decided to adopt the proposed amendment to require the air compressor governor cut-in pressure to be greater than 85 psi. Under the amendment, the air compressor on a tractor or truck capable of towing a trailer would begin functioning whenever the air pressure falls below 85 psi. although three commenters opposed the requirement, the agency believes that it has significant safety advantages. Under this amendment, the air compressor on a tractor would be activated to restore or maintain pressure in the brake supply system until the air leak is detected and corrected. The agency believes that most, if not all, vehicles already comply with this requirement. Thus, the agency has concluded that this requirement will not be an undue burden.

The proposed amendment that would, in effect, have required a split service brake system was opposed by nine commenters. Three commenters supported the concept of the proposed amendment, with two of the commenters suggesting changes.

NHTSA has decided not to adopt this proposed amendment. NHTSA still believes that split systems offer safety benefits, and encourages manufacturers to use such systems whenever possible. However, the agency has determined that the proposed amendment might have inhibited the development of antilock braking systems. The proposed amendment would have precluded the use of certain types of antilock systems, such as tandem control systems. In addition, the comments received indicated that a split service brake system, which has more valves, could be more complicated and expensive to implement, and more difficult to maintain. A more detailed discussion of the comments on the proposed rule and the agency response to those comments follows.

Deletion of Separate Reservoir Requirement

Most commenters stated that the current requirement of a separate reservoir for the parking brake was design restrictive, added unnecessary complexity, and had no significant safety benefits. In support of their comments, both the Truck Trailer Manufacturers Association (TTMA) and Fruehauf Trailer Operations of Terex Trailer Corporation (Fruehauf) cited the safety record of trailers, without a separate reservoir, operated in Canada since 1980. Those trailers use tractor air supply pressure instead of a separate reservoir to release a trailer's parking brakes. Both TTMA and Fruehauf claimed that no problems with this system had been reported. Bendix Heavy Vehicle Systems of Allied Signal, Inc. (Bendix), echoed these remarks when it asserted that the agency's concerns about spring brake drag and lack of driver warning in systems without a separate reservoir "have not

materialized in actual service." (NHTSA contacted Transport Canada and confirmed that there was nothing indicating that the lack of separate reservoirs on many vehicles in Canada was causing a safety problem.) Bendix also commented that systems that created excessive brake drag would not be "accepted by the industry," thus implying that NHTSA's concern was misdirected.

The American Trucking Associations, Inc. (ATA) commented that elimination of the separate reservoir requirement would facilitate the adoption of a "generic," or standardized, type of trailer brake system. This standardized system would, ATA stated, be more cost effective because it would "eliminate the need for costly proprietary parking brake valves" and "provide for more effective brake maintenance."

The only commenter in favor of retaining the separate reservoir requirement was Eaton Corporation (Eaton). Eaton was concerned that elimination of this requirement would permit "unlimited operation of trailers with failed service brake systems." As stated in the NPRM, this is also possible under the current requirements. In addition, the field experience of Canadian trailers, as cited by TTMA and Fruehauf, does not support this concern.

As stated above, the agency has decided to adopt this amendment as proposed in the NPRM. NHTSA has concluded that there is insufficient justification for requiring a separate reservoir to release parking brakes. There are, at most, minor safety benefits from such a system. In addition, as reported by commenters, there has been no apparent safety problem in Canada, which does not require a separate reservoir to release parking brakes. Accordingly, NHTSA has decided to amend Standard No. 121 to delete that requirement. By deleting a potentially expensive, design restrictive requirement, this final rule facilitates the introduction of more effective trailer braking systems. This final rule may also simplify the maintenance of trailer braking systems.

NHTSA acknowledges that the old requirement may have encouraged some manufacturers to install axle-by-axle braking systems in vehicles. This is because a large portion of the cost associated with axle-by-axle braking is for a reservoir for each axle or half of the trailer braking system. Some current air brake systems for tandem-axle trailers satisfy the current separate reservoir requirement with use of two reservoirs in such a way as to provide axle-by-axle braking. Thus, the old reservoir requirement significantly reduced the cost disadvantage associated with axle-by-axle braking systems. Axle-by-axle braking systems can provide a margin of safety by retaining some level of braking capability during failures in the service brake system. However, NHTSA believes that many manufacturers will continue to install axle-by-axle braking systems. Therefore, NHTSA does not believe that the adoption of this amendment will have any negative safety implications. However, NHTSA will monitor the effect of the deletion of the separate reservoir requirement for any detrimental safety impact.

Low Pressure Warning System

In the NPRM, the agency discussed alternative means of warning the driver of low brake pressure. The warning could be through the air pressure warning signal already located on tractor instrument panels or through a warning lamp located on the left side of the trailer visible in the driver's rearview mirror. The first approach would require the installation of a new electrical connection between the tractor and trailer. NHTSA stated that it tentatively favored the second approach. This was primarily because it would be less expensive to implement and would not be dependent on the installation of the electrical connection on both parts of the tractor-trailer combination.

Commenters were nearly unanimous in opposing the proposed amendment that would require a low pressure warning system for trailers. Commenters listed a number of potential problems with the proposed amendment. Bendix commented that the proposed amendment was "design restrictive" and that it was neither "justified nor necessary." Fruehauf asserted that "[v]ehicle and driver performance without low pressure warning systems and without isolated reservoirs has been demonstrated on Canadian trailers built since 1980."

In the preamble of the NPRM, the agency discussed the possibility of driver distraction from the proposed warning system. Commenters noted that this possibility would occur. Several commenters questioned whether a warning lamp that is not distracting at night would be bright enough to be seen during daylight conditions. Great Dane Trailers, Inc (Great Dane) reflected the views of several commenters when it commented that the warning lamp would tend to "divert the driver's attention away from the road to the device at just the instant that he should be totally focused on what's happening in the road ahead of him."

In the NPRM, the agency stated that manufacturers would, for practical purposes, need to power the warning system by the stop lamp circuit. Several commenters expressed concern about using the stop lamp circuit for this purpose, especially when the stop lamp circuit is used to power the proposed antilock system. ATA commented that "[t]he capacity of [the stop lamp] circuit on multiple trailer combinations is satisfactory for powering both stop lamps and antilock systems but more lights could make it marginal." (Currently, Standard No. 121 requires that the stop lamp circuit be used for antilock braking systems. However, as discussed in the preamble of the proposed rule published on May 3, 1991 (56 FR 20401), NHTSA is considering whether an additional circuit might be necessary.)

The agency proposed in the NPRM that the warning lamp be located on the left side of the trailer, as close to the front and as near to the top as possible, but not more than 96 inches above the road surface. The agency also proposed that the lamp flash at a rate of between 150 to 200 flashes per minute. Fruehauf commented that the proposed location, at the front corner of the trailer, is a "hostile damage environment." In addition, Fruehauf stated that the cost of installing the warning lamp system would be $125.00 per unit, much more than the $6–9 per unit estimated by NHTSA. Several Commenters asserted that flashers that provide the desired flash rate or are reliable enough to be used on a trailer are not commercially available. ATA also commented that lighting systems are one of the most costly maintenance items on trailers and that this proposed warning lamp would add to those costs.

As stated above, the agency has decided not to adopt this proposed amendment. Although NHTSA believes that the cost per unit would be less than that claimed by Fruehauf, the cost per unit would be more than the originally estimated by the agency. NHTSA currently estimates that the unit cost of adding a low-pressure warning system would be about $20 for single axle trailers and $30 for tandem axle trailers. In addition, NHTSA agrees with commenters that the proposed warning light requirement could make it more difficult to adopt other safety features. In particular, while the brake lamp circuit may have enough power for an antilock braking system, it may not have enough power for both an antilock braking system and a warning lamp

system. The agency has determined that the expense of the proposed warning system and its potential impact on the adoption of other safety features outweigh any potential increase in safety that this proposed amendment might have provided.

Air Compressor Cut-In Pressure

The proposed amendment would have required that the air compressor governor cut-in pressure be greater than 85 psi. Under this amendment, the air compressor on a tractor would be activated to restore or maintain pressure in the brake supply system until the air leak is detected and corrected. NHTSA stated in the preamble of the proposed rule that the proposed amendment was consistent with current industry practice.

TTMA agreed with the agency's position that the current practice is for "cut-ins" at or above the proposed 85 psi. TTMA, however, questioned the need for an additional requirement. ATA commented that it had no objection to the requirement as applied to towing trucks. ATA believed that the requirement would be more effective and less costly than the proposed warning lamp system. Bendix commented that the current "trailer supply low air pressure warning technique" at 75 psi eliminates the need for the requirement. Volvo GM commented that the compliance documentation expenses would not be reasonable.

As stated above, NHTSA has decided to adopt this proposed amendment. The agency believes that most, if not all, vehicles already comply with this requirement. Thus, the agency has concluded that this requirement will not be an undue burden. In addition, the agency believes that this requirement has significant safety advantages. As stated above, under this amendment, the air compressor on a tractor would be activated to restore or maintain pressure in the brake supply system until the air leak is detected and corrected.

Pneumatic System Failure/Split Service Brake System

As stated above, this proposed amendment would have required, in effect, a split service brake system. Nearly all commenters opposed this proposed amendment. Commenters asserted that the proposed amendment would be complicated and expensive to comply with and would inhibit the development of antilock brake systems.

Eaton asserted that "split braking systems have lower reliability and durability, they are harder to maintain, and they have greater imbalance of air pressure between brakes." Eaton's comments were supported by the comments of several other commenters. Eaton also stated that it is not opposed to split service brake systems, but is opposed to a regulation that would require them. Eaton believes that design flexibility is an important goal.

In addition to reliability concerns, several commenters stated that a requirement for split service braking systems would inhibit the development of antilock braking systems. ATA asserted that a split system would preclude use of a tandem control antilock system. Tandem control systems, ATA stated, "have the potential of minimizing the cost and complexity of introducing antilock systems on trailers."

Finally, several commenters asserted that the cost of a split service braking system might not be justified by its safety benefits. Great Dane reported that most of the trailers that it produces have a split service braking system and that it believes that such a system provides an extra margin of safety. However, Great Dane is not aware of any "incidents" caused by a lack of a split service braking system. TTMA and Bendix commented that they were not aware of any test data or field requirement that would justify a split service braking system. In addition, Bendix submitted test results which it claimed showed that a split service braking system:

1. Improves stopping capability when the rear reservoir is depleted.
2. Degrades stopping capability when the front reservoir is depleted.
3. Has the same stopping capability as a tandem control system for the most common failure of a trailer air brake system, i.e., a failed hose or chamber diaphragm.

Bendix concluded from its test results that there are no "comprehensive benefits" from using a split service braking system.

NHTSA believes that the Bendix tests shows that split braking systems offer marginal braking performance benefits. In the Bendix tests, the improved performance for the "axle control" (split service) brake system in the rear reservoir failure case, compared to the tandem control braking system, was significantly greater than the degradation in performance of the axle control system in the front reservoir failure case.

As stated above, the agency has decided not to adopt this proposed amendment. Based on the comments received, the agency has determined that the proposed amendment might inhibit the development of antilock braking systems. Therefore, the agency has decided not to require split braking systems at this time. NHTSA will continue to analyze the possible safety benefits of split braking systems and will monitor developments in this area.

Supply Line Pressure Retention

In the proposed rule, NHTSA proposed requirements to address drag-induced brake fade caused by partial application of parking brakes. Eaton Corporation commented that the proposed requirements would prohibit existing brake systems, which the commenters thought worked well.

NHTSA has decided not to adopt the proposed requirements. NHTSA has concluded that the proposed requirements are not necessary. There is over ten years experience in Canada with brake systems that use higher minimum supply line pressure, without a protected reservoir. Those systems apparently work well. NHTSA expects that drivers and maintenance personnel will continue the current practice of cycling the brake system and listening for air leaks each time a vehicle is placed in service.

Automatic Application of Parking Brakes

NHTSA proposed to adopt requirements concerning automatic application of parking brakes. The proposed amendment would generally not permit automatic application of the parking brakes when the air pressure in the supply line is 70 psi or higher. Automatic application of the parking brakes would be permitted only when air pressure in the supply line is less than 70 psi or in the case of a failure of a component of the parking brake system or brake chamber housing.

The proposed amendment addressed the safety problems caused by partial application of the parking brakes when a trailer pneumatic system failure occurs. As discussed more fully in the SNPRM, such a partial application of the parking brakes can cause brake fade and result in a 26 to 29 percent loss in brake effectiveness. This could result in runaway accidents and jackknife accidents. Excessive brake drag could also result in excessive brake lining wear and possible damage to brake drums.

MGM opposed the proposed 70 psi requirement. NHTSA recognizes that in some existing designs it may be possible to experience initial brake drag at 70 psi with a brake at maximum adjustment. The spring chamber pressure at which drag begins to occur is a function of the strength of the spring in the brake

chambers and the level of brake adjustment. More air pressure is required to hold off the parking brake when the spring in the parking brake chamber is larger. It is possible to rate the holding power of a spring brake chamber over a wide range. A brake chamber with a "high force" spring for better holding power in park may exhibit brake drag at a higher air pressure. Conversely, a chamber with a low force spring may not exhibit initial drag until chamber pressure drops to 50 psi or less.

However, in spite of these variations, testing conducted by NHTSA indicated that 70 psi is a reasonable level. Therefore, NHTSA has adopted the proposed requirement.

Effective Date

NHTSA proposed to make the amendment effective one year after publication of a final rule in the **Federal Register**. The agency also proposed to permit optional compliance effective 30 days after publication. NHTSA received no comments opposed to the proposed dates for mandatory and optional compliance.

The agency believes that one year is sufficient time for manufacturers to redesign their vehicles to meet the requirements. Because it would facilitate the earlier redesign of some vehicles, the agency finds that good cause exists for permitting optional compliance thirty days after final publication of the final rule. Thus, NHTSA has decided to adopt the effective dates as proposed.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The agency has analyzed the economic and other effects of this final rule and determined that they are neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The agency has prepared a Final Regulatory Evaluation, which has been placed in the docket for this final rule. NHTSA estimates that the final rule would reduce costs about $9 to $46 per trailer. This is because trailer manufacturers are no longer required to design brake systems with a separate parking brake reservoir. Manufacturers may use less costly air brake system components instead of multi-function valves. Manufacturers that have designed brake systems using a separate reservoir will not be precluded by this amendment from using those systems and will benefit from the additional design flexibility allowed by this amendment.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that this amendment will not have a significant economic impact on a substantial number of small entities. As stated above, this final rule deletes the requirement that air brake systems have a separate trailer reservoir. This, with the other amendments to Standard No. 121 included in this final rule, should slightly decrease manufacturing costs.

The new requirement for air compressor governor cut-in pressure should have minimal cost impact. The agency believes that most, if not all, vehicles already meet the requirement. For those vehicles that do not comply, only a minor modification is necessary to meet the requirement. The price of new vehicles would be negligibly affected. Thus, neither manufacturers of motor vehicles, nor small businesses, small organizations, or small governmental units which purchase motor vehicles, will be significantly affected by the amendments. Accordingly, no regulatory flexibility analysis has been prepared.

Executive Order 12612 (Federalism)

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The amendment has no impact on any State laws.

National Environmental Policy Act

The agency has also analyzed this rule for the purpose of the National Environmental Policy Act. NHTSA has determined that it will not have any significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; designation of authority at 49 CFR 1.50.

§ 571.121 [Amended]

2. Section 571.121 is amended by adding S5.1.1.1 to read as follows:

S5.1.1.1 Air compressor cut-in pressure. Effective October 8, 1992, or at the manufacturer's option effective November 7, 1991, the air compressor governor cut-in pressure shall be greater than 85 p.s.i.

3. S5.2.1.1 is removed and S5.2.1.2 through S5.2.1.5 are redesignated as S5.2.1.1 through S5.2.1.4 respectively.

4. Newly redesignated S5.2.1.1 is revised to read as follows:

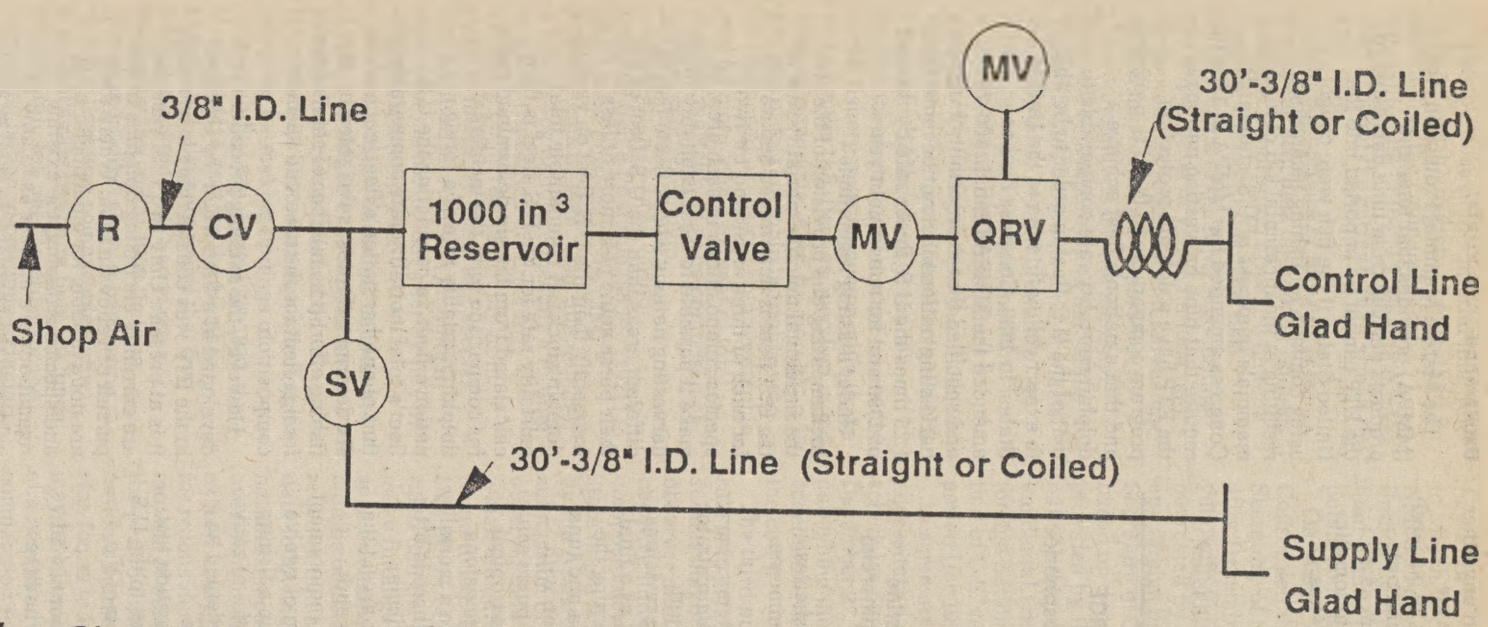
S5.2.1.1 For vehicles manufactured before October 8, 1992, total service reservoir volume shall be at least eight times the combined volume of all service brake chambers at maximum travel of the pistons or diaphragms. For vehicles manufactured on or after October 8, 1992, or at the manufacturer's option for vehicles manufactured on or after November 7, 1991, the total volume of each service reservoir shall be at least eight times the combined volume of all service brake chambers serviced by that reservoir at the maximum travel of the pistons or diaphragms of those service brake chambers. However, the reservoirs on a heavy hauler trailer and on the trailer portion of an auto transporter need not meet the requirements specified in S5.2.1.1.

5. S5.2.1.5 is added to read as follows:

S5.2.1.5 For vehicles manufactured before October 8, 1992, a reservoir shall be provided that is capable, when pressurized to 90 p.s.i., of releasing the vehicle's parking brakes at least once and that is unaffected by a loss of air pressure in the service brake system. This requirement need not be met if the vehicle meets the applicable requirements specified in S5.1.1.1, the second sentence of S5.2.1.1, and S5.8.1 through S5.8.4, notwithstanding the effective date of those requirements.

6. Figure 1 is revised to read as follows:

BILLING CODE 4910-59-M



SV - Shut-off Valve
R - Regulator (set at 100 psi for service brake actuation tests;
95 psi for service brake release tests;
100 psi for parking brake tests in S5.6.3.3, S5.6.3.4, S5.6.5.4, and S5.6.6.5, and for the supply line pressure retention test in S5.8.2; and any pressure above 70 psi for parking brake test in S5.6.5.3.)
CV - Check Valve
MV - Metering Valve (Variable or Fixed)
QRV - Quick Release Valve

Figure 1. Trailer Test Rig.

BILLING CODE 4910-59-C

7. S5.8 is redesignated S5.8.1 and is revised to read as follows:

S5 8.1 *Emergency braking capability.* Each trailer other than a trailer converter dolly shall have a parking brake system that conforms to S5.6 and that applies with the force specified in S5.6.1 or S5.6.2 when the air pressure in the supply line is at atmospheric pressure. A trailer converter dolly shall have, at the manufacturer's option—

(a) A parking brake system that conforms to S5.6 and that applies with the force specified in S5.6.1 or S5.6.2 when the air pressure in the supply line is at atmospheric pressure, or

(b) An emergency system that automatically applies the service brakes when the service reservoir is at any pressure above 20 lb/in^2 and the supply line is at atmospheric pressure. However, any agricultural commodity trailer, heavy hauler trailer, or pulpwood trailer shall meet the requirements of S5.8.1 or, at the option of the manufacturer, the requirements of § 393.43 of this title.

8. S5.8 is added to read as follows:

S5.8 *Trailer Pneumatic System Failure Performance.* Each trailer shall meet the requirements of S5.8.1 through S5.8.3.

9. S5.8.2 through S5.8.3 are added to read as follows:

S5.8.2 *Supply Line Pressure Retention.* Effective October 8, 1992, or at the manufacturer's option effective November 7, 1991, any single leakage type failure in the service brake system (except for a failure of the supply line, a valve directly connected to the supply line or a component of a brake chamber housing) shall not result in the pressure in the supply line falling below 70 p.s.i., measured at the forward trailer supply coupling. A trailer shall meet the above supply line pressure retention requirement with its brake system connected to the trailer test rig shown in Figure 1, with the reservoirs of the trailer and test rig initially pressurized to 100 p.s.i., and the regulator of the trailer test rig set at 100 p.s.i.

S5.8.3 *Automatic Application of Parking Brakes.* Effective October 8, 1992, or at the manufacturer's option effective November 7, 1991, with an initial reservoir system pressure of 100 p.s.i. and initial supply line pressure of 100 p.s.i., and if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the rear supply line coupling, and with any subsequent single leakage type failure in any other brake system, of a part designed to contain compressed air or brake fluid (excluding failure of a component of a brake chamber housing but including failure of any diaphragm of a brake chamber which is common to the parking brake system and any other brake system), whenever the air pressure in the supply line is 70 p.s.i. or higher, the parking brakes shall not provide any brake retardation as a result of complete or partial automatic application of the parking brakes.

Issued on October 2, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91–24123 Filed 10–7–91; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 910919–1219]

Taking and Importing of Marine Mammals Incidental to Commercial Fishing Operations

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Interim final rule.

SUMMARY: The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), is publishing revisions to the regulations, published as a final rule on March 30, 1990, governing the importation of yellowfin tuna and tuna products caught in association with marine mammals by foreign purse seine fishing vessels in the eastern tropical Pacific Ocean (ETP). These revisions address: (1) How to calculate a mortality rate for the U.S. fleet when there is little or no fishing effort on a particular species group in a particular area; (2) a new schedule for requesting and receiving findings; and (3) a requirement for submission of a minimum of twelve months of observer data from a fishing season for reconsideration of a negative finding if a nation has been denied an affirmative finding due to an unacceptable species composition test. This 12-month period adheres to the U.S. District Court's interpretation of the MMPA for these tests.

DATES: Effective date: October 8, 1991; comments must be received no later than November 7, 1991.

ADDRESSES: Comments should be sent to E.C. Fullerton, Director, Southwest Region, NMFS, 300 South Ferry Street, room 2005, Terminal Island, CA 90731. Copies of the supporting analyses are also available.

FOR FURTHER INFORMATION CONTACT: E.C. Fullerton, Director, Southwest Region, NMFS, 213–514–6196.

SUPPLEMENTARY INFORMATION:

Background

The Marine Mammal Protection Act (MMPA) provides that tuna and products derived from tuna harvested in the ETP cannot be imported into the United States if the fish were caught using commercial fishing technology resulting in the incidental kill of marine mammals in excess of U.S. standards. Congress amended the MMPA in 1984 to require that tuna harvesting nations in the ETP have a dolphin protection program comparable to the U.S. program and that a nation's fleet achieve a dolphin mortality rate comparable to that of the U.S. fleet in order to be able to export yellowfin tuna to the United States. In 1988, Congress further amended the MMPA (Pub. L. 100–711) and specified that the mortality rate of a harvesting nation must not be more than 1.25 times the U.S. fleet's rate by the end of 1990 and for subsequent years.

Under existing regulations implementing this provision of the Act, the incidental dolphin mortality rate of the U.S. fleet is determined separately for each of three areas and for two species compositions in each area, to make it possible to treat equitably those harvesting nations whose fleets fish in different areas than the U.S. fleet or set their purse seine nets more or less frequently than the U.S. fleet on various dolphin stocks. A comparable total mortality rate for the U.S. fleet is then calculated from the six determined rates for comparison with the incidental dolphin mortality rate of a foreign nation's fleet. In calculating the U.S. fleet's total mortality rate comparable to that of another nation's fleet, each of the six determined rates is weighted by the fishing effort (i.e., number of sets) of the foreign fleet for the area and species composition.

However, the existing procedure was developed at a time when the U.S. fleet in the ETP was considerably larger than it is at present. Only two U.S. vessels are currently encircling dolphins in the pursuit of yellowfin tuna. Where data are not available for a particular area and species grouping, the existing regulations are unclear as to how to calculate the comparable total mortality rate for the U.S. fleet. Further, for a species composition in a particular area (an individual cell in the data matrix of three areas by two species compositions) where only a few sets by the U.S. fleet have occurred, it is likely that the observed mortality rate will be highly variable and, therefore, inappropriate for use in calculating rates of mortality for comparison purposes.

One purpose of this interim final rule is to establish an alternative method for calculating the comparable total mortality rate of the U.S. fleet that takes into account the current small size of the U.S. fleet.

Another purpose of this rule is to revise the schedule for making findings to allow importation of yellowfin tuna into the United States. The 1988 amendments to the MMPA governing the importation of yellowfin tuna and tuna products require that a harvesting nation must meet a two-part test to determine that its marine mammal program is comparable to that of the United States before its tuna products are allowed to enter this country. A nation must provide documentary evidence that it has a regulatory program for taking marine mammals in the fishery that is comparable to the U.S. program, and the average rate of incidental mortality of marine mammals in the fishery must be comparable to the rates for the U.S. fleet as specified in the 1988 amendments. Also, no more than 15 percent of total dolphin mortality may be composed of eastern spinner dolphin, and no more than 2 percent of total dolphin mortality may be composed of coastal spotted dolphin.

On March 30, 1990, NMFS promulgated a final rule (55 FR 11921) to implement portions of the MMPA amendments of 1988. That rule required a harvesting nation requesting a finding to submit specified documentary evidence on its regulatory program, dolphin mortality rates, and species composition mortality in an annual report for each calendar year by July 31 of the subsequent year.

Recent judicial decisions necessitate revision of this rule, as well as an interim final rule published on December 27, 1990, that also affected the schedule for making findings of comparability. On August 28, 1990, the U.S. District Court for the Northern District of California found that the MMPA required NMFS to make a finding by the end of 1989 that the overall mortality rate of a harvesting nation's fleet was comparable to the U.S. fleet's rate (no more than 2.0 times the U.S. rate for 1989) in order for the harvesting nation to continue to import yellowfin tuna into the United States. The Court further ruled on October 4, 1990, that the MMPA required NMFS to make findings of comparability for species composition mortality on the basis of 12 months of data. The U.S. Court of Appeals for the Ninth Circuit affirmed this ruling on April 11, 1991.

On December 27, 1990 (55 FR 53160), the schedule for harvesting nations to submit annual reports was changed from July 31 of the subsequent calendar year to March 15 of each year, allowing NMFS 30 days to complete a proposed finding by April 15, and providing for a final finding by May 31, following a public comment period.

On March 26, 1991, the U.S. District Court ruled that the MMPA required the Secretary of the Treasury to prohibit, after December 31, the importation of yellowfin tuna or tuna products harvested by purse seine in the ETP by any foreign nation unless and until the Secretary of Commerce makes findings based on documentary evidence provided by the government of exporting nations that the average rate of the incidental taking by vessels of such foreign nation is no more than 1.25 times that of U.S. vessels during the same period (for 1990 and thereafter).

In summary, the court's rulings necessitate a revision of the finding schedules published on March 30 and December 27, 1990. Therefore, NMFS is publishing the following revised finding schedule to conform to the mandates of the court.

The third purpose of this interim final rule is to establish a requirement for submission of at least 12 months of observer data for reconsideration of a negative finding based upon the species composition tests. Current regulations state that a finding may be reconsidered by the Assistant Administrator upon submission of a minimum of 6 months of observer data following the year in which the nation's incidental take was found to exceed acceptable levels. The U.S. District Court, on October 4, 1990, ruled that the MMPA required NMFS to make findings of comparability for species composition on the basis of 12 months of data. This interim final rule requires that a minimum of 12 months of data following the period in which the nation's species composition of the overall mortality rate was found to exceed acceptable levels, be submitted for reconsideration. A minimum of 6 months of observer data, documenting the period following the year in which nation's marine mammal mortality rate was found to exceed acceptable levels, may be submitted for a reconsideration of a negative finding if the species composition test was acceptable but the overall mortality rate was unacceptable.

I. Calculating the Mortality Rate of the U.S. Fleet

NMFS has examined several methods to determine comparability of the overall mortality rate of the harvesting nations' fleets with that of the U.S. fleet, and has chosen to use an unweighted mortality estimate when it is determined that a weighted mortality estimate is not appropriate. The weighted method arranges data in a two-by-three matrix (the total number of marine mammals observed killed in each of three fishing areas (cells) by purse seine sets on (1) common dolphin, and (2) all other marine mammal species). The current comparison method, which uses weighted U.S. mortality rates, would be replaced by a direct comparison of unweighted mortality rates for the U.S. and the foreign fleet whenever there are any cells with four or fewer sets by the U.S. fleet (including cells with no effort) and where there is some effort by the foreign fleet. Using this method, the existing procedures for calculating the mortality rate of a foreign fleet would not change. Further, and as a point of clarification, under the weighted method for any cell in the two-by-three matrix where no data exist for both the U.S. and the foreign fleet, this cell would be dropped from the calculation of the mortality rate of the U.S. fleet. Data for calculating the unweighted U.S. mortality rate, including cells with four or fewer sets, would be from the same time period as the data used to calculate the mortality rate for the foreign fleet. As explained below, the period of comparison may be for more than one year.

NMFS realizes that mortality rates differ due to differences in the areas fished and dolphin species set upon. However, NMFS believes that this revised approach best satisfies the intent of the MMPA as interpreted in recent court rulings.

If the U.S. fleet has no dolphin sets in any cell for which the foreign nation made sets in a particular fishing year, NMFS has concluded that the best approach that is still consistent with the Court's rulings is to require a foreign country to submit data from two or more fishing seasons and to compare these mortality data with the U.S. data from the same time period. This option, allowed under the current regulations, permits a country to submit data for a maximum of the most recent 5 consecutive years. For example, if the fleet of a foreign nation has made dolphin sets in the 1992 and 1993 fishing seasons, while the U.S. fleet has only made dolphin sets in 1992, the 2 years of data from the foreign fleet would be compared with data from the same time period for the U.S. fleet, even though the number of dolphin sets in the second year will be zero. Further, NMFS will require a foreign nation to submit 2 or more years of data in the case where the U.S. fleet has fewer than five sets on dolphin in a given year in a cell in which the foreign nation had made sets.

The disadvantage of the direct comparison method (i.e., methods that do not incorporate the variance of an estimator into the comparison) is that foreign fleets with exactly the same mortality rate as the U.S. fleet will fail the comparability test by chance alone at an unacceptable rate (as high as 50 percent of the time) according to generally accepted statistical methodologies. If historical U.S. data were not used to compare with current foreign data, given the small size of the U.S. fleet, there would be no way out of this dilemma.

Alternative Comparability Methods That Were Not Considered Appropriate

Alternative methods to handle cells from either the U.S. or a foreign data set that were empty or had little effort were also considered, but rejected. They are as follows:

1. Continue under existing regulations.

This alternative is not appropriate because it does not allow for the situation where a foreign fleet has effort on a particular species grouping in a particular area, while the U.S. fleet has no such effort. If a foreign nation submits mortality data including sets on common dolphins in area 2, it is likely that there will be no comparable data for the U.S. fleet because there were no U.S. sets on common dolphins in area 2 between 1985 and 1989. In this situation, the U.S. fleet's mortality rate for common dolphin in area 2 is undefined. With the reduced number of vessels in the U.S. fleet, this problem can only become worse.

2. Where there are fewer than five sets by the U.S. fleet in a particular cell, eliminate data from sets in this area and species groupings for both fleets in calculating mortality rates.

This alternative is not appropriate because it would likely result in excluding much of the effort of a foreign fleet from the estimate of its mortality rate because the U.S. fleet had little effort on a particular species grouping in a particular area.

3. Where there are fewer than five sets by the U.S. fleet, but at least one set on a particular species grouping in a particular area, calculate the U.S. mortality rate as described in the interim final rule published March 18, 1988 (53 FR 8910).

This alternative was rejected because, while it is mathematically possible in this situation to follow the existing regulations in calculating the U.S. fleet's mortality rate, it is not statistically appropriate. The variability in dolphin mortality in a single set is known to range from zero to over 1000 animals. If this single set happens to be a zero-kill set, it is likely that the estimated mortality rate for the U.S. fleet will be negatively biased (i.e., the mortality rate will be underestimated). If an unusually large number of animals are killed in this set, the estimated mortality rate of the U.S. fleet will be positively biased.

4. Where there are fewer than five sets by the U.S. fleet on a particular species grouping in a particular area, use one of several statistical approaches to estimate missing data (for example, see Biometry, Sokal and Rolf, 1969, W.H. Freeman and Co.: p. 338).

This alternative was rejected because, while at first glance it seems to be reasonable, on further inspection of patterns in the U.S. fleet's database from 1985–1989, it does not seem that the area-effect is as important as the species-effect in predicting mortality rates, especially for the common dolphin species grouping. To test the area-versus-species effect for common dolphins, which is the species grouping most likely to have small samples in each of the three area groupings, NMFS scientists compared the number of times that the kill-per-set (KPS) for common dolphins in area 3 was less than the KPS in area 1 and the number of times that the KPS of non-common dolphins in area 3 was less than the KPS in area 1. They found that for common dolphins the KPS in area 3 was less than the KPS in area 1 in 1985, 1986, 1988, and 1989. Only in 1987 was this relationship not maintained. For non-common dolphins, the KPS in area 3 was always greater than the KPS in area 1—the opposite relationship. Therefore, if standard statistical approaches (i.e., one that assumes that the area-effect observed for the non-common dolphin species group will be similar to the area-effect for the common dolphin species group) are used to estimate the KPS for common dolphins in area 3, based on observed rates of mortality for common and non-common dolphins in area 1 and non-common dolphins in area 3, the resulting estimate will likely be an overestimate. Because of this problem and because of the relative homogeneity in the average KPS for common dolphins in areas 1 and 3 from 1985 through 1989, this method was considered unacceptable.

5. Where there are fewer than five sets by the U.S. fleet on a particular species group in a particular area, calculate the mortality rate for that cell as the average mortality rate for that species grouping over all three areas from the U.S. database. If there are fewer than five sets for the entire species grouping, calculate the KPS for each cell for that species grouping as the average KPS for each cell from the 1988-1990 U.S. database.

An example of how the procedure would be applied is as follows (data are actual data for the U.S. fleet in 1990 and for a hypothetical foreign fleet):

U.S. FLEET MORTALITY DATA

Area	Common dolphins		Non-common dolphins	
	Sets	Kill	Sets	Kill
1	13	231	1,178	2,146
2	0	0	342	1,421
3	1	0	289	1,267

FOREIGN NATION MORTALITY DATA

Area	Common dolphins		Non-common dolphins	
	Sets	Kill	Sets	Kill
1	10	200	1,000	2,000
2	0	0	500	1,500
3	4	80	100	400

For the hypothetical foreign nation in the example, there were 1,614 sets, which resulted in a mortality of 4,180 dolphins. The mortality rate for the foreign nation's fleet is, therefore, 2.59 dolphins per set. Under the existing regulations, the weighted KPS for the U.S. fleet is calculated as:

$(231/13)\times(10/1614)+(0/0)\times(0/1614)+(0/1)\times(4/1614)+(2146/1178)\times(1000/1614)+(1421/342)\times(500/1614)+(1267/289)\times(100/1642)=2.7737$, assuming the term, where 0 is divided by 0 is 0.

Under this approach, the U.S. fleet's KPS for common dolphins in area 3 would be changed from 0.0 to 16.50, and in area 2 would be dropped from the calculation. The resulting KPS would be 2.8146.

This alternative was rejected because it was determined to be unacceptably complicated, particularly given Federal Court comments on the manner in which NMFS compared the mortality rate of the U.S. fleet with that of a foreign fleet, and is likely to give the appearance of favoring a foreign nation that has a fishing effort on dolphins in a cell that the U.S. fleet does not.

6. Use a "statistical" method, i.e., evaluate the probability of obtaining a value as large or larger than the observed KPS of a foreign fleet from a normal distribution with a mean based on the weighted average KPS of the U.S. fleet (R_{us}) given equal consideration to the Type I and Type II statistical errors. Because making a Type I error (i.e., statistically rejecting a fleet's mortality rate when it should be accepted) could

be construed as disadvantaging a foreign fleet, while making a Type II error (i.e., statistically accepting a fleet's mortality rate when it should be rejected) could be construed as disadvantaging dolphins stocks, it is recommended in applying this approach that the Type I and II errors be made equal and set at 0.1. This is the same error rate that was used in the experimental design of NMFS' dolphin monitoring program.

NMFS personnel are currently studying the statistical viability of this method. Given the very small U.S. fleet size in 1991 (i.e., 1–3 vessels fishing on dolphins), it is likely that R_f / R_{us} would have to be greater than 1.25 to be significant (R_f is the foreign nation kill-per-set rate). Because of this disadvantage this approach was rejected, although under a less demanding comparison rate standard it would represent a valid statistical comparison.

II. Modifying the Finding Schedule

NMFS is redefining the fishing season as a period not coincidental with a calendar year, but rather from October 1 through September 30. The annual report for the fishing season would require mortality data from all trips completed from October 1 through September 30 of the following calendar year. The 3-month period following the fishing season would allow: (1) The Inter-American Tropical Tuna Commission (IATTC) to compile the observer data and submit it to the nations requesting a finding; (2) the nation requesting a finding to compile a report based on these observer data and a description of its regulatory enforcement program for submission to NMFS by December 1; and (3) NMFS to compile and analyze the annual report data and make a finding by December 31. If a finding is not made by December 31, an embargo would be imposed. The disadvantage of this finding schedule is that the fishing season will not coincide with the calendar year. The advantage is that a finding will be made by December 31 of each year, and if the finding is affirmative, importation of yellowfin tuna for the following calendar year will be allowed.

The selection of these dates was made after close consultation with the IATTC, which administers the international tuna-dolphin observer program. Its responsibility also includes editing, verifying, and compiling the observer data for submission to participating harvesting nations for their use in monitoring fleet performance and preparation of annual reports for submission to the United States. The IATTC has reorganized its observer data processing task to accommodate the revised schedule. It will utilize data from both permanent and provisional databases in order to provide the best available data in the shortest possible time.

Alternative Schedules That Were Not Considered Appropriate

Several alternatives were considered that would allow a finding to be made based on a full year's data, and also to be made by the end of the year. A 2- to 3-month period is required to allow the IATTC time to assemble and verify the data, for the importing nations to prepare and submit an annual report, and for NMFS to review and verify annual report data and make a finding for each nation. This essentially means that a nation's 1-year finding must be offset by 3 months from the 1-year fishing season, either before the end of the calendar year or after the beginning of the calendar year. The alternatives considered are discussed below.

1. Establish a fishing season (October 1 through September 30) for determination of overall dolphin mortality that is not coincidental with a calendar year, but allow the fishing year to remain the same as the calendar year for the determination concerning the percentage of the total mortality consisting of eastern spinner and coastal spotted dolphin. The annual report would be submitted and a finding made for the following calendar year based only on the overall mortality during the fishing season. A subsequent finding would be made for the percentage of the total mortality for eastern spinner and coastal spotted dolphin (probably by March 1). This option allows the use of a calendar year for the eastern spinner and coastal spotted dolphin, and allows NMFS to make a partial finding by December 31 of each year.

Although this approach would apparently meet the requirements of the Court's interpretations of the regulations, the obvious drawback is the fact that two findings must be made each year, further complicating an already complicated procedure.

2. Make a finding based on data from a calendar year, to be defined as the fishing season, for all dolphin mortality. Again, approximately 2 to 3 months are necessary to allow the IATTC time to compile the data, to submit it to the nations, for the importing nations to prepare and submit an annual report, and for NMFS to make a finding based on the annual reports. A finding would be made on March 15, and would extend until the following March 15. This method has the benefit of using observer data for an entire calendar year as a basis for a finding, but a finding would not be made until March 15. If a nation does not submit its annual report in time for NMFS to make the finding by March 15, an embargo of that nation's yellowfin tuna products would be imposed.

This method would not be acceptable in view of the rulings of the Court because the finding is not made by the end of the calendar year. Also, it is much simpler for exporters and importers to deal with a finding that is made to extend for a calendar year, which is the established practice.

III. Requirement for Reconsideration of Negative Finding

The U.S. District Court ruled on October 4, 1990, that the MMPA required NMFS to make findings of comparability for species composition on the basis of 12 months of data. In accordance with the Court's interpretation of the MMPA, NMFS is requiring that a nation that wishes to be reconsidered for a finding after receiving a negative finding must submit, at a minimum, observer data from the most recent complete fishing season. This interim final rule requires a minimum of 12 months of data be submitted for reconsideration of the species composition of the mortality (i.e., no more than 15 percent and of the nation's observed total mortality may be comprised of eastern spinner dolphin, and no more than 2 percent of the total mortality may be comprised of coastal spotted dolphin) if the overall mortality was found to be no greater than 1.25 times that of the U.S. mortality rate. A finding on overall mortality may be reconsidered by the Assistant Administrator upon submission of a minimum of 6 months observer data following the year in which the nation's mortality rate was found to exceed acceptable levels. Because the Court found that computations for the species mortality composition could not be made using periods of less than 1 year, the interim final rule requires a full year of observer data for determination of species mortality composition. The period for which observer data may be reconsidered must follow the period in which the nation's mortality rate was found to exceed acceptable levels. A negative finding based upon a deficient program element could be reconsidered at any time.

Classification

The Assistant Administrator has determined that the changes proposed to be made at 50 CFR 216.24(e) by this

interim final rule will not have a significant impact on the human environment. This determination is based on the impact analyses provided in the environmental assessment (EA) prepared for the interim final yellowfin tuna import rule which was published on March 7, 1989. Therefore, an environmental impact statement is not required. The EA is available upon request (see ADDRESSES).

This rule is being promulgated as an interim final rule without opportunity for prior public comment and without a delayed effectiveness period because it involves a foreign affairs function of the United States. The timing of an announcement of a proposed change in foreign nations' reporting date requirements or of imposing embargoes against nations with findings that are due to expire on December 31, 1991, is closely linked with the Government's overall political agenda concerning relations with these other nations. Data submitted by December 1, 1991, will allow findings by December 31, 1991, and will avoid unnecessary embargoes. Public comment is solicited while this rule is in effect and comments received will be considered in preparing the final rule. The Assistant Administrator has determined that this interim final rule is not subject to review under Executive Order 12291 because it involves a foreign affairs function of the United States (section 1 (a)(2)). This interim final rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act and does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612. The Regulatory Flexibility Act does not apply to this action.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: October 1, 1991.

Samuel W. McKeen,

Program Management Officer.

For reasons stated in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. In § 216.3, a new definition for "Fishing season," is added in alphabetical order, to read as follows:

§ 216.3 Definitions.

* * * * *

Fishing season means, for the purposes of § 216.24(e), those sets made on trips that are completed between October 1 and September 30 of the following calendar year.

* * * * *

3. In § 216.24, paragraphs (e)(5)(iv), (e)(5)(v), (e)(5)(v)(F), and (e)(5)(viii) are revised to read as follows:

§ 216.24 Taking and related acts incidental to commercial fishing operations.

* * * * *

(e) * * *

(5) * * *

(iv) A harvesting nation that has in effect a positive finding under this section may request renewal of its finding for the following calendar year by providing the Assistant Administrator, by December 1 of the current calendar year, an update of the information listed in § 216.24(e)(5)(ii) summarizing all fishing trips completed during the 12-month period from October 1 of the previous calendar year through September 30 of the current year.

(v) The Assistant Administrator's determination of a nation's timely submitted request for renewal of an affirmative finding will be announced by December 31. A finding will be valid for the calendar year following the fishing season for which observer data was submitted for obtaining a finding. The Assistant Administrator will make an affirmative finding or renew an affirmative finding if:

* * * * *

(F) For determining comparability where there are fewer than five sets (including no effort) on dolphin by the U.S. fleet in a fishing area on a species grouping that has fishing effort by the foreign nation requesting a comparability test, the mortality rates used for comparability will be the overall (i.e., unweighted) kill-per-set rate of the U.S. fleet and of the foreign nation's fleet.

* * * * *

(viii) The Assistant Administrator may reconsider a finding upon a request from and the submission of additional information by the harvesting nation, if the information indicates that the nation has met the requirements under paragraph (e)(5)(v) of this section. For a harvesting nation whose marine mammal mortality rate was found to exceed the acceptable levels prescribed in paragraphs (e)(5)(v)(E), (e)(5)(v)(F), or (e)(5)(v)(G) of this section, the additional information must include data collected by an acceptable observer program which must demonstrate that the nation's fleet marine mammal mortality rate improved to the acceptable level during the period submitted for comparison, which must include, at a minimum, the most recent:

(A) twelve months of observer data if the species composition rate prescribed by (e)(5)(v)(G) was not acceptable; or

(B) six months of observer data if the average kill-per-set rate prescribed by (e)(5)(v)(E) was not acceptable.

* * * * *

[FR Doc. 91-24076 Filed 10-7-91; 8:45 am]

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Proposed Rules

Federal Register
Vol. 56, No. 195
Tuesday, October 8, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV-91-432PR]

Proposed Increase in 1991-92 Budgeted Expenditures Under the Marketing Order Covering Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes increasing authorized expenditures by $6,000 for the 1991–92 fiscal year (August 1–July 31) under Marketing Order No. 905. This action would increase authorized expenditures to $216,000, up from $210,000. The $6,000 will be added to the "Appropriated Reserve" which was created to be utilized this season for a "Mexico-Texas Citrus Tour," scheduled to take place in March 1992. This season, the tour will encompass the Texas Valley and the citrus producing regions of Mexico.

This proposed action is needed for the Citrus Administrative Committee (committee) to pay additional anticipated expenses associated with the tour. The committee's initial cost estimate was not adequate to cover the cost. The proposed action would enable the committee to continue to perform its duties and the marketing order to operate.

DATES: Comments must be received by November 7, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3918.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the order. The agreement and order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pusuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 100 citrus handlers subject to regulation under the marketing order covering fresh oranges, grapefruit, tangerines, and tangelos grown in Florida, and about 10,200 producers of these fruits in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A minority of these handlers and a majority of these producers may be classified as small entities.

A final rule was published in the **Federal Register** (56 FR 32061, July 15, 1991) authorizing expenditures of $210,000 and an assessment rate of $0.0025 per 4/5 bushel carton of fresh fruit shipped under M.O. 905 for the fiscal year ending July 31, 1992.

This marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year shall apply to all assessable citrus fruit handled from the beginning of such year. An annual budget of expenses and assessment rate is prepared by the committee and submitted to the Department for approval. The committee members are handlers and producers of Florida citrus. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate appropriate budgets. The budget is formulated and discussed in public meetings. Thus, all directly affected persons had an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by the expected cartons (4/5 bushels) of fruit shipped. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. Recommended budgets and rates of assessments are usually acted upon by the committee shortly before the season begins, and during the season when needed, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals, and any increases, must be expedited so that the committee will have funds to pay its expenses.

The committee met on September 10, 1991, and unanimously recommended a $6,000 increase in 1991–92 budgeted expenditures to $216,000, up from the $210,000 currently authorized. The $6,000 will be added to the "Appropriated Reserve" which was created to be utilized this season for a "Mexico-Texas Citrus Tour," scheduled for March 1992. The purpose of this tour is to gather information on the growing and marketing of fruit in Mexico and Texas. This information will be used by the committee to plan how Florida citrus will be marketed domestically. This season, the tour will encompass the

Texas Valley and the citrus producing regions of Mexico. This proposed action is needed by the committee to pay additional anticipated expenses associated with the tour. The committee's earlier cost estimate was not adequate to cover the cost.

The committee plans to finance this additional $6,000 of expenses by drawing funds from its reserve fund, which is adequate to cover the contemplated additional expenditures. Thus, no increase in the current assessment rate is necessary. This proposed action would enable the committee to continue to perform its duties and the marketing order to operate.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Based on the above, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A comment period of 30 days is deemed appropriate for this action. The fiscal year for this marketing order began on August 1, 1991, and the committee's expenses are incurred on a continuous basis.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 905 be amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 905.230 is revised to read as follows:

§ 905.230 Expenses and assessment rate.

Expenses of $216,000 by the Citrus Administrative Committee are authorized, and an assessment rate of $0.0025 per 4/5 bushel carton of assessable fruit is established for the fiscal year ending July 31, 1992. Any unexpended funds from the 1990–91 fiscal year may be carried over as a reserve.

Dated: October 2, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–24193 Filed 10–7–91; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–NM–203–AD]

Airworthiness Directives; British Aerospace ATP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to all British Aerospace Model ATP series airplanes, which currently requires repetitive applications of an icing inhibitor to each propeller blade. Ice shedding from the propeller blades could strike the fuselage and subsequently result in reduced structural integrity of the fuselage. This action would add an additional modification which, if accomplished, would terminate the need for repetitive applications of icing inhibitor. This proposal is prompted by the development of a new propeller blade assembly and ice control timer unit.

DATES: Comments must be received no later than November 26, 1991.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–203–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM–113; telephone (206) 227–2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–203–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On October 1, 1990, the FAA issued AD 90–21–12, Amendment 39–6764 (55 FR 41512, October 12, 1990), applicable to all Model ATP series airplanes, to require repetitive applications of an icing inhibitor to each propeller blade. That action was prompted by reports of vibration and/or fuselage skin damage due to the shedding of ice accretion from the propeller blades. This condition, if not corrected, could result if reduced structural integrity of the fuselage.

Since issuance of that AD, British Aerospace has issued Service Bulletin ATP–61–2, Revision 2, dated October 25, 1990, which describes procedures for the application of Autoglym 12 as an alternative to Icex icing inhibitor; and installation of a composite ice guard (Modification 10129A) as an alternative for repetitive application of icing inhibitor.

British Aerospace has also issued Revision 3 of Service Bulletin ATP–61–2, dated April 19, 1991, which describes procedures for the installation of a new propeller digital ice control timer unit and a new propeller blade and roller assembly incorporating an external

blade heater (Modification 10174A) as an additional alternative for repetitive applications of icing inhibitor. This modification, when accomplished, will reduce: (1) The amount of ice accretion on the propeller blades, (2) the size of the ice particles separating from the blades, (3) the probability of ice particles damaging the fuselage, and (4) the degree of propeller imbalance resulting from separation of ice particles from the blades. The United Kingdom has classified these service bulletins as mandatory.

Additionally, British Aerospace has issued Service Bulletin ATP–30–13, Revision 1, dated February 15, 1991, which provides further detailed procedures for the accomplishment of Modification 10174A.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed that would supersede AD 90–21–12 with a new airworthiness directive and that would continue to require repetitive applications of icing inhibitor to each propeller blade. However, this proposal would add an additional modification which, if accomplished in accordance with the service bulletins previously described, would terminate the need for repetitive applications of icing inhibitor.

It is estimated that 8 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $880.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–6764 and by adding the following new airworthiness directive:

British Aerospace: Docket No. 91–NM–203–AD. Supersedes AD 90–21–12.

Applicability: Model BAe ATP series airplanes, which have not incorporated Modification 10129A or 10174A, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent reduced structural integrity of the fuselage, accomplish the following:

(a) Within 50 hours time-in-service after October 29, 1990 (the effective date of AD 90–21–12, Amendment 39–6764), and thereafter at intervals not to exceed 50 hours time-in-service, apply an icing inhibitor to the propeller blades in accordance with British Aerospace Service Bulletin ATP–61–2, Revision 1, dated October 31, 1989, or Revision 2, dated October 25, 1990, or Revision 3, dated April 19, 1991.

(b) Installation of Modification 10129A (installation of ice guards on both the left and right sides of the fuselage) in accordance with British Aerospace Service Bulletin ATP–53–10, dated March 7, 1990; or installation of Modification 10174A (installation of a new propeller digital ice control timer unit and a new propeller blade and roller assembly) in accordance with British Aerospace Service Bulletin ATP–30–13, Revision 1, dated February 15, 1991, constitutes terminating action for the repetitive applications of icing inhibitor to the propeller blades as required by paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on September 25, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–24161 Filed 10–7–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–93–AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This notice proposes to revise an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 737 airplanes, which would have required the installation of additional protection on the wire bundles in the circuit breaker panel to guard against damage from chafing and to protect the battery bus wiring from overloading. That proposal was prompted by reports of arcing and smoke emanating from the panel and discovery of undersized wiring to a battery bus. These conditions, if not corrected, could result in smoke and fire in the cockpit emanating from the panel and loss of safety essential systems. This revised proposal would require that additional airplanes be included in the applicability of the rule.

DATES: Comments must be received no later than November 12, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention Airworthiness Rules Docket No. 91–NM–

93–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew S. Wade, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM–130S; telephone (206) 227–2751. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commentors wishing the FAA to acknowledge receipt of their comments submitted in response to the Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–93–AD." The post card will be date/time stamped and returned to the commentor.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 737 series airplanes, which would have required the installation of additional protection of the wire bundles in the circuit breaker panel to guard against damage from chafing and to protect the battery bus wiring from overloading, was published in the **Federal Register** on May 8, 1991 (56 FR 21342).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The manufacturer requested that the proposed rule be revised to cite other revisions of the referenced service bulletins as additional appropriate sources for service information. The maufacturer also requested that the proposed rule be clarified to give credit to airplanes on which the modification had been accomplished previously in accordance with other revisions of the referenced service bulletins.

The FAA concurs with these requests. Since issuance of the proposal, the FAA has reviewed and approved the following service bulletins:

a. Boeing Service Bulletin 737–24–1077, Revision 1, dated August 16, 1990; and Revision 2, dated July 25, 1991.

b. Boeing Service Bulletin 737–24–1084, Revision 1, dated March 8, 1991.

These revisions make minor clarifications to the accomplishment instructions. They also add airplanes to the effectivity listings; these additional airplanes have been identified as ones on which the subject modification has not been installed.

The FAA had determined that, since additional airplanes have been identified that are subject to the addressed unsafe condition, the proposed rule must be revised to include these airplanes in the applicability of the rule. Since this change would expand the scope of the proposal, the comment period had been reopened to provide additional time for public comment on the revised proposal.

The proposed rule also has been revised to include all revisions of the referenced service bulletins as appropriate sources of service information. Additionally, the format of the proposed rule has been restructured to be consistent with the standard **Federal Register** style.

There are approximately 863 Boeing Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 450 airplanes of U.S. registry would be affected by this AD. It would take approximately 10 manhours per airplane to accomplish both modifications on 388 airplanes, and 6 manhours per airplane to replace the undersized wire on the other 62 airplanes. The average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $233,860.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket No. 91–NM–93–AD.

Applicability: Model 737 series airplanes; as listed in Boeing Service Bulletin 737–24–1077, Revision 2, dated July 25, 1991, and Boeing Service Bulletin 737–24–1084, Revision 1, dated March 8, 1991; certificated in any category.

Compliance: Required within 6 months after the effective date of this AD, unless previously accomplished.

To prevent chafing of wires and electrical overload of wires, and to remove the potential for a fire in the cockpit, accomplish the following:

(a) For airplanes listed in Boeing Service Bulletin 737–24–1077, Revision 2, dated July 25, 1991: Modify the wire bundles and install a capped quick release receptacle and nutplate in accordance with Boeing Service

Bulletin 737–24–1077, dated August 17, 1989; Revision 1, dated August 16, 1990; or Revision 2, dated July 25, 1991.

(b) For airplanes listed in Boeing Service Bulletin 737–24–1084, Revision 1, dated March 8, 1991: Replace the undersized wire with a 12 gage wire in the P6–2 Circuit Breaker Panel in accordance with Boeing Service Bulletin 737–24–1084, dated October 11, 1990; or Revision 1, dated March 8, 1991.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on September 25, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–24162 Filed 10–7–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–170–AD]

Airworthiness Directives; SAAB–Scania Models SF–340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain SAAB-Scania Models SF–340A and SAAB 340B series airplanes, which would require inspection and modification of the passenger door handle mechanism. This proposal is prompted by reports of cracked spring pins in the door handle attachments. This condition, if not corrected, could result in impeded passenger evacuation during an emergency egress.

DATES: Comments must be received no later than November 25, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–170–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from SAAB-Scania AB, Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM–113; telephone (206) 227–2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–170–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority of Sweden, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain SAAB-Scania Models SF–340A and SAAB 340B series airplanes. There have been recent reports of cracked spring pins in main passenger door handle attachments. If the spring pins crack, they may not stay in place, and opening of the main passenger door may be impossible. This condition, if not corrected, could result in impeded passenger evacuation during an emergency egress.

SAAB–Scania has issued Service Bulletin 340–52–014, dated April 16, 1991, which describes procedures to perform a one-time inspection of spring pin holes for hole diameter tolerance, and repair, if necessary; replacement of spring pins on the main passenger door handle mechanism; and installation of additional retaining bolts at the upper and lower door handles. The LFV has classified this service bulletin as mandatory, and has issued Swedish Airworthiness Directive (SAD) No. 1–048 addressing this subject.

This airplane model is manufactured in Sweden and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, and AD is proposed which would require a one-time inspection of spring pin holes for hole diameter tolerance, and repair, if necessary; replacement of spring pins on the main passenger door handle mechanism; and installation of additional retaining bolts at the upper and lower door handles; in accordance with the service bulletin previously described.

It is estimated that 121 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $19,965.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "major rule" under Executive

Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Saab-Scania: Docket No. 91–NM–170–AD.

Applicability: Model SF–340A series airplanes, Serial Numbers 004 through 159; and SAAB 340B series airplanes, Serial Numbers 160 through 259; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent impeded passenger evacuation during an emergency egress, accomplish the following:

(a) Within 600 landings after the effective date of this AD, accomplish the following in accordance with SAAB Service Bulletin 340–52–014, dated April 16, 1991:

(1) After removing the two main passenger door handle spring pins (roll pins), perform an inspection of the spring pin holes for proper hole tolerance. If the hole diameter is undersize or oversize, prior to further flight, repair in accordance with the service bulletin.

(2) Replace the two spring pins on the main passenger door handle mechanism with new spring pins, and install additional locking bolts at the upper and lower door handles in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB-Scania AB, Product Support, S–581.88, Linkoping, Sweden.

These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on September 24, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–24163 Filed 10–7–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 91–NM–160–AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede two existing airworthiness directives, applicable to certain Boeing Model 737 series airplanes, which currently require repetitive inspections, cleaning of the auxiliary power unit shroud drains and plenum fuel drain, and an Airplane Flight Manual limitation which prescribes an operational procedure to be followed when an unsuccessful start occurs. This condition, if not corrected, could result in severe fire damage to the empennage causing the loss of primary flight control surfaces. This action would require modifications to the affected APU drains. This proposal is prompted by a modification, developed by the manufacturer, which provides an improved drain. Once installed, this modification terminates the need for the existing repetitive inspections and operational procedure.

DATES: Comments must be received no later than November 25, 1991.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–160–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington, 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Bray, Seattle Aircraft Certification Office, Propulsion Branch, ANM–140S; telephone (206) 227–2681. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–160–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On March 31, 1989, the FAA issued AD 89–08–11, Amendment 39–6190 (55 FR 14639, April 12, 1989), applicable to all Model 737 series airplanes to require repetitive inspections and cleaning of the auxiliary power unit (APU) shroud drains and plenum fuel drain. On February 14, 1990, the FAA issued AD 90–05–02, Amendment 39–6518 (55 FR 6947, February 28, 1990), applicable to all Model 737 series airplanes, to require a revision to the Airplane Flight Manual (AFM) that includes procedures following an unsuccessful APU ground start. These actions were prompted by

reports of APU tailpipe fires which caused damage to the empennage control surfaces. These torching incidents were attributed to an accumulation of unburned fuel in the APU shroud and plenum, which ignited when the APU start occurred. This condition, if not corrected, could result in severe fire damage to the empennage causing the loss of primary flight control surfaces.

Since issuance of those AD's, the manufacturer has developed a modification which improves the APU fuel drainage system. The FAA has reviewed and approved Boeing Service Bulletin 737–49–1073 dated July 25,1991, which describes a modification to the APU fuel drain assembly, which significantly reduces clogging due to contaminants. The FAA has also reviewed and approved Boeing Service Letter 737–SL–49–14, Revision B, dated April 20, 1989, which merely clarifies the procedures described in Revision A of the service letter. (Revision A was referenced in AD 89–08–11, Amendment 39–6190.)

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede airworthiness directives (AD) 89–08–11 and 90–05–02 with a new AD that would require modification of the affected APU drains in accordance with the service bulletin previously described, and thus terminate the existing requirement for repetitive inspections, and cleaning of the APU shroud drains and plenum fuel drain, and allow removal of the AFM limitation.

There are approximately 1,977 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 895 airplanes of U.S. registry would be affected by this AD, that it would take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Modification parts are estimated to cost $378 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $830,560.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by revising Amendments 39–6190 and 39–6518 and by adding the following new airworthiness directive:

Boeing: Docket No. 91–NM–160–AD. Supersedes AD's 89–08–11 and 90–05–02.

Applicability: Model 737 series airplanes, line number 0001 through 2060 equipped with Garrett GTCP 85–129 series auxiliary power units (APU), certificated in any category.

Compliance required as indicated, unless previously accomplished.

To preclude the possibility of an uncontained APU tailpipe fire due to clogged shroud and fuel drains, accomplish the following:

(a) Prior to the accumulation of 150 flight hours after April 25, 1989 (the effective date of Amendment 39–6190, AD 89–08–11), perform a one-time inspection of the exhaust flange and the exhaust muffler heat shield skin joint and remove any excess or loose sealant, and perform an inspection and cleaning of the APU shroud, plenum and combustor drain lines, in accordance with Boeing Service Letter 737–SL–49–14, Revision A, dated March 29, 1989, or Boeing Service Letter 737–SL–49–14, Revision B, dated April 20, 1989. Thereafter, at intervals not to exceed 500 hours, or immediately following maintenance involving the drain system (e.g., APU change etc.) perform an inspection and cleaning of the APU shroud drains and plenum fuel drain in accordance with the service letters.

(b) Within 10 days after March 12, 1990 (the effective date of Amendment 39–6518, AD 90–05–02), revise the Limitations section of the FAA-approved Airplane Flight Manual (AFM) by adding the following instructions. This may be accomplished by inserting a copy of this Ad into the AFM.

"*AUXILIARY POWER UNIT LIMITATION:*

After any unsuccessful APU ground start, either placard the APU "NO GROUND STARTING" or accomplish the following during the subsequent ground start attempt(s):

(1) Following an unsuccessful APU start attempt, the subsequent APU ground start attempt(s) must be monitored by a qualified ground observer to assure proper APU starting. The FAA Principal Maintenance Inspector (PMI) must approve the qualified ground observer, the monitoring procedures, and the method of documentation for compliance with these procedures. If APU tail pipe torching is observed, prior to flight, inspect the affected airplane surface(s) for fire damage and/or paint blistering. Repair or replace fire-damaged area(s) in a manner approved by the Manager, Seattle Aircraft Certification Office prior to further flight.

(2) Following successful APU operation, if subsequent unsuccessful APU ground starts are again experienced, the ground start monitoring requirements required by paragraph (b)(1) of this Ad must be repeated.

(3) The placard may be removed and APU ground starting resumed following appropriate maintenance action to determine and resolve the cause of the unsuccessful ground start, or successful ground start has been accomplished in accordance with paragraph (b)(1) of this AD, or in-flight starting and operation is accomplished.

Note: In-flight starting and operating of the APU is not impacted by this action."

(c) Within 36 months after the effective date of this AD, modify the APU drain assembly in accordance with Boeing Service Bulletin 737–49–1073, dated July 25, 1991. This modification constitutes terminating action for the repetitive inspections and cleaning requirement required by paragraph (a) of this AD. The AFM limitation required by paragraph (b) of this AD may be removed following completion of the modification.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents

may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on September 23, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-24164 Filed 10-7-91; 8:45 am]

BILLING CODE 4910-13-M

PEACE CORPS

22 CFR Part 312

Enforcement of Nondiscrimination on the Basis of Handicap in Federally Conducted Programs

AGENCY: United States Peace Corps.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation requires that the Peace Corps operate all of its programs and activities without discrimination against qualified individuals with handicaps. It sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides a definition for individual with handicaps and qualified individual with handicaps, and establishes a complaint mechanism for resolving allegations of discrimination. This regulation is issued under the authority of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap in programs or activities conducted by Federal Executive agencies. The Peace Corps has been guided substantially by the Department of Justice in the development of these regulations, and, at the request of the Department has incorporated into this preamble interpretative material consistent with that included by other Federal Executive agencies; in some cases we have modified that language to relate the material to the Peace Corps activities.

DATES: To be assured of consideration, comments must be in writing and must be received on or before December 9, 1991. Comments should refer to specific sections in the regulation.

ADDRESSES: Comments should be sent to John K. Scales, General Counsel, Peace Corps, 1990 K Street, NW., room 8300, Washington, DC 20526. Comments will be available for public inspection from 8:30 a.m. to 5 p.m., Monday through Friday. Copies of this notice will be made available on tape for persons with impaired vision who request it.

FOR FURTHER INFORMATION CONTACT: John K. Scales, General Counsel. Telephone: (202) 606-3114 (Voice). TTY: Local (202) 606-3290. Long Distance: 1-(800) 424-8580, Extension 242 (Voice Extension to TTY) or dial above TTY local number with area code.

SUPPLEMENTARY INFORMATION:

Background

The purpose of this proposed rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the United States Peace Corps (hereinafter "the agency"). Section 504 of the Rehabilitation Act of 1973 states in pertinent part that:

> No otherwise qualified individual with handicaps in the United States, * * * shall, solely by reason of her or his handicap be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.* (29 U.S.C. 794 [1978 amendment italicized].)

The substantive nondiscrimination obligations of the agency, as set forth in this proposed rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance (See 28 CFR part 41 (section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.;* 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

There are, however, some language differences between this proposed rule and the Federal Government's section 504 regulations for federally assisted programs. These changes are based on the Supreme Court's decision in *Southeastern Community College* v. *Davis,* 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting *Davis* and section 504. See *Dopico* v. *Goldschmidt,* 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association (APTA)* v. *Lewis,* 655 F.2d 1272 (D.C. Cir. 1981); see also *Rhode Island Handicapped Action Committee* v. *Rhode Island Public Transit Authority,* 718 F.2d 490 (1st Cir. 1983).

These language differences are also supported by the decision of the Supreme Court in *Alexander* v. *Choate,* 469 U.S. 287 (1985), where the Court held that the regulations for federally assisted programs did not require a recipient to modify its durational limitation on Medicaid coverage of inpatient hospital care for handicapped persons. Clarifying its *Davis* decision, the Court explained that section 504 requires only "reasonable" modifications, *id.* at 300, and explicitly noted that" [t]he regulations implementing section 504 [for federally assisted programs] are consistent with the view that *reasonable* adjustments in the nature of the benefit offered must be made to assure meaningful access." *Id.* at 301 n.21 (emphasis added).

Incorporation of these changes, therefore, makes this regulation implementing section 504 for federally conducted programs consistent with the Federal Government's regulations implementing section 504 for federally assisted programs as they have been interpreted by the Supreme Court. Many of these federally assisted regulations were issued prior to the interpretations of section 504 by the Supreme Court in *Davis*, by lower courts interpreting *Davis*, and by the Supreme Court in *Alexander*; therefore their language does not reflect the interpretation of section 504 provided by the Supreme Court and by the various circuit courts. Of course, these federally assisted regulations must be interpreted to reflect the holdings of the Federal judiciary. Hence the agency believes that there are no significant differences between this proposed rule for federally conducted programs and the Federal Government's interpretation of section 504 regulations for federally assisted programs.

This proposed regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed to Executive agencies. This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206). It is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127)

and, therefore, a regulatory impact analysis has not been prepared. This regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

Section-by-Section Analysis

Section 312.101 Purpose

Section 312.101 states the purpose of the proposed rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Section 312.102 Application

The proposed regulation applies to all programs or activities conducted by the agency in the United States but in general not to programs or activities conducted outside the United States.

Under this section, a federally conducted program or activity is, in simple terms, anything the agency does. In addition to employment, there are two major categories of agency conducted programs or activities covered by this regulation: those involving general public contact as part of ongoing agency operations and those directly administered by the agency for program beneficiaries and participants. Activities in the first category include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the agency's facilities. Activities in the second category include programs that provide Federal services or benefits.

Under the Peace Corps Act (22 U.S.C. 2501), the agency's programs and activities center on the recruitment of and activities of Volunteers overseas in meeting the needs of interested countries that request them. By legislative charter, Volunteers are the principal agents for fulfilling the goals of the Peace Corps Act:

(1) To help the peoples of such countries and areas in meeting their needs for trained manpower, particularly in meeting the basic needs of those living in the poorest areas of such country, and

(2) To help promote a better understanding of the American people on the part of the peoples served and

(3) A better understanding of other peoples on the part of the American people.

To give meaning to the implementation of section 504 in that context and as a matter of policy without regard to any legal obligation, the agency will apply this part to individuals with handicaps serving as Volunteers (and Trainees) overseas. Applicants for Volunteer service, and individuals who have accepted an invitation to serve as Volunteers are covered as persons in the United States. This part makes no substantive change in the rights of members of the U.S. foreign service wherever serving and does not, except as to Volunteers, extend any right overseas or to overseas facilities.

Section 312.103 Definitions

"Agency." For purposes of this regulation "agency" means Peace Corps.

"Assistant Attorney General." "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 312.160(a)(1), they may also be necessary to meet other requirements of the regulation.

"Complete complaint." "Complete complaint" is defined to include all the information necessary to enable the agency to investigate the complaint. The definition is necessary, because the 180 day period for the agency's investigation (see (see § 312.170(g)) begins when the agency receives a complete complaint.

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs (28 CFR 41.3(f)) except that the term "vehicles" has been added and the phrase "or interest in such property" has been deleted because the term "facility," as used in this regulation, refers to structures and not to intangible property rights. It should, however, be noted that the regulation applies to all programs and activities conducted by the agency in the United States regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the agency. The term "facility" is used in §§ 312.149, 312.150 and 312.170(f). "Individual with handicaps." The definition of "individual with handicaps" is identical to the definition of "handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31). Although section 103(d) of the Rehabilitation Act Amendments of 1986 changed the statutory term "handicapped individual" to "individual with handicaps," the legislative history of this amendment indicates that no substantive change was intended. Thus, although the term has been changed in this regulation to be consistent with the statute as amended, the definition is unchanged. In particular, although the term as revised refers to "handicaps" in the plural, it does not exclude persons who have only one handicap.

"Qualified individual with handicaps." The definition of "qualified individual with handicaps" is a revised version of the definition of "qualified handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

Paragraph (1) deviates from other regulations for federally assisted programs because of the intervening court decisions. It defines "qualified individual with handicaps" with regard to any program in which a person is required to perform services or to achieve a level of accomplishment. In such programs a qualified individual with handicaps is one who can achieve the purpose of the program without modifications in the program that the agency can demonstrate would result in a fundamental alteration in its nature. This definition reflects the decision of the Supreme Court in *Davis.* In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

We have incorporated the Court's language in the definition of "qualified individual with handicaps" in order to make clear that such a person must be able to participate in the program

offered by the agency. The agency is required to make modifications in order to enable an applicant with handicaps to participate, but is not required to offer a program of a fundamentally different nature nor require that foreign government agencies or non-governmental organizations operating outside the United States make any accommodations. The test is whether, with appropriate modification, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program the agency does not offer. Although the revised definition allows exclusion of some individuals with handicaps from some programs, it requires that an individual with handicaps who is capable of achieving the purpose of the program must be accommodated, provided the modifications do not fundamentally alter the nature of the program.

The agency has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alteration, the agency must follow the procedures established in §§ 312.150(a) and 312.160(d), which are discussed below, for demonstrating that an action would result in undue financial and administrative burdens. The decision must be made by the agency head or his or her designee in writing after consideration of all resources available for the program or activity and must be accompanied by an explanation of the reasons for the decision. If the agency head determines that an action would result in a fundamental alteration, the agency must consider options that would enable the individual with handicaps to achieve the purpose of the program but without the necessity of such an alteration.

For programs or activities that do not fall under paragraph (1), paragraph (2) adopts the existing definition of "qualified handicapped person" with respect to services (28 CFR 41.3(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this definition, a "qualified individual with handicaps" is an individual with handicaps who meets the essential eligibility requirements for participation in the program or activity.

Paragraph (3) explains that "qualified individual with handicaps" means "qualified handicapped person" as that term is defined for purposes of employment in the Equal Employment Opportunity Commission's regulation at 29 CFR 1613.702(f), which is made applicable to this part by § 312.140. Nothing in this part changes existing regulations applicable to employment.

"Section 504." This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the agency and not to programs or activities to which it provides Federal financial assistance.

Section 312.110 Self-Evaluation

The agency shall conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with individuals with handicaps that promotes both effective and efficient implementation of section 504.

Section 312.111 Notice

Section 312.111 requires the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section 312.130 General Prohibitions Against Discrimination

Section 312.130 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 312.130 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. If the agency violates a provision in any of the subsequent sections, it will also violate one of the general prohibitions found in § 312.130. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of individuals with handicap(s). The agency may not refuse to provide an individual with handicaps with an equal opportunity to participate in or benefit from its program simply because the individual is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of individuals with handicap(s) (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical or psychological condition by its very nature would prevent an individual from meeting the eligibility requirements for participation in the activity in question. It would be permissible, therefore, to exclude without an individual evaluation all persons who are blind in both eyes from eligibility to serve as a vehicle driver; but it may not be permissible to automatically disqualify all those who are blind in just one eye.

In addition, section 504 prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to a handicapped person be as effective as that afforded to others. The later sections on programs accessibility (§§ 312.149–312.151) and communications (§ 312.160) are specific applications of this principle.

Despite the mandate of paragraph (d), that the agency adminster its programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, paragraph (b)(1)(iv), in conjunction with paragraph (d), permits the agency to develop separate or different aids, benefits, or services when necessary to provide handicapped persons with an equal opportunity to participate in or benefit from the agency's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified individual with handicaps still has the right to choose to participate in the program that is not designed to

accommodate individuals with handicaps.

Paragraph (b)(1)(v) prohibits the agency from denying a qualified individual with handicaps the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vi) prohibits the agency from limiting a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the agency from utilizing criteria or methods of administration that deny individuals with handicaps access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and to the actual practices of the agency. This paragraph prohibits both exclusionary policies or practices that are blatant, as well as policies and practices that are ostensibly neutral, but in reality deny individuals with handicaps an effective opportunity to participate without significantly serving a legitimate organizational purpose.

Paragraph (b)(4) specifically applies the prohibition enunciated in § 312.130(b)(3) to the process of selecting sites for construction of new facilities or selecting existing facilities to be used by the agency. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(5) prohibits the agency, in the selection of procurement contractors, from using criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

Paragraph (b)(6) prohibits the agency from discriminating against qualified individuals with handicaps on the basis of handicap in granting of license or certification. A person is a "qualified individual with handicaps" with respect to licensing or certification if he or she can meet the essential eligibility requirements for receiving the license or certification (see § 312.103).

In addition, the agency may not establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. For example, the agency must comply with this requirement when establishing safety standards for the operations of licensees. In that case the agency must ensure that standards that it promulgates do not discriminate against the employment of qualified individuals with handicaps in an impermissible manner.

Paragraph (b)(6) does not extend section 504 directly to the programs or activities of licensees or certified entities themselves. The programs or activities of federal licensees or certified entities are not themselves federally conducted programs or activities nor are they programs or activities receiving Federal financial assistance merely by virtue of the Federal license or certification. However, as noted above, section 504 may affect the content of the rules established by the agency for the operation of the program or activity of the licensee or certified entity, and thereby indirectly affect limited aspects of their operations.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only individuals with handicaps or a given class of individuals with handicaps may be limited to those individuals with handicaps.

Paragraph (d), discussed above, provides that the agency must administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, *i.e.*, in a setting that enables individuals with handicaps to interact with nonhandicapped persons to the fullest extent possible.

Section 312.140 Employment

Section 312.140 prohibits discrimination on the basis of handicap in employment by the agency. Courts have held that section 504, as amended in 1978, covers the employment practices of Executive agencies. *Gardner* v. *Morris*, 752 F.2d 1271, 1277 (8th Cir. 1985); *Smith* v. *United States Postal Service*, 742 F.2d 257, 259–260 (6th Cir. 1984); *Prewitt* v. *United States Postal Service*, 662 F.2d 292, 302–04 (5th Cir. 1981). *Contra, McGuiness* v. *United States Postal Service*, 744 F.2d 1318, 1320–21 (7th Cir. 1984); *Boyd* v. *United States Postal Service*, 742 F.2d 410, 413–14 (9th Cir. 1985).

Courts uniformly have held that, in order to give effect to section 501 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504. *Morgan* v. *United States Postal Service*, 798 F.2d 1162, 1164–65 (8th Cir. 1986); *Smith*, 742 F.2d at 262; *Prewitt*, 662 F.2d at 304. Accordingly, § 312.140 ("Employment") of this rule adopts the definitions, requirements, and procedures of section 501 as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR part 1613. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR, 178 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap. In addition to this section, § 312.170(b) specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination.

Section 312.149 Program Accessibility: Discrimination Prohibited

Section 312.149 states the general nondiscrimination principle underlying the program accessibility requirement of §§ 312.150 and 312.151.

Section 312.150 Program Accessibility: Existing Facilities

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.57), with certain modifications. Thus, § 312.150 requires that each agency program or activity, when viewed in its entirety, be readily accessible to and usable by individuals with handicaps. The regulation also makes clear that the agency is not required to make each of its existing facilities accessible (§ 312.150(a)). However, § 312.150, unlike 28 CFR 41.57, places explicit limits on the agency's obligation to ensure program accessibility (§§ 312.150(a)(2)).

Paragraph (a)(2) generally codifies recent case law that defines the scope of the agency's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirement the agency is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in § 312.160(d). This provision is based on the Supreme Court's holding in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation to a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504.

See, e.g., *Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association (APTA)* v. *Lewis*, 655 F.2d 1272 (D.C. Cir. 1981).

Paragraphs (a)(2) and § 312.160(d) are also supported by the Supreme Court's decision in *Alexander* v. *Choate*, 469 U.S. 287 (1985). *Alexander* involved a challenge to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from 20 to 14 days per year. Plaintiffs argued that this reduction violated section 504 because it had an adverse impact on individuals with handicaps. The Court assumed without deciding that section 504 reaches at least some conduct that has an unjustifiable disparate impact on individuals with handicaps, but held that the reduction was not "the sort of disparate impact" discrimination that might be prohibited by section 504 or its implementing regulation. *Id.* at 299.

Relying on *Davis*, the Court said that section 504 guarantees qualified individuals with handicaps "meaningful access to the benefits that the grantee offers," *id.* at 301, and that "*reasonable adjustments* in the nature of the benefit being offered must at times be made to assure meaningful access." *Id.* at n.21 (emphasis added). However, section 504 does not require " 'changes,' 'adjustments,' or 'modifications' to existing programs that would be 'substantial' * * * or would constitute 'fundamental alteration(s) in the nature of a program.' " *Id.* at n.20 (citations omitted). *Alexander* supports the position, based on *Davis* and the earlier lower court decisions that, in some situations, certain accommodations for an individual with handicaps may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. Thus failure to include such an "undue burdens" provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

This paragraph, however, does not establish an absolute defense; it does not relieve the agency of all obligations to individuals with handicaps. Although the agency is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that individuals with handicaps receive the benefits and services of the federally conducted program or activity.

Compliance with § 312.150(a) would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 312.150(a) would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedures established in § 312.170.

Paragraph (b) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the agency shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of individuals with handicaps. Structural changes in existing facilities are required only when there is no other feasible way to make the agency's program accessible. (It should be noted that "structural changes" include all physical changes to a facility; the term does not refer only to changes to structural features, such as removal of or alterations to a load bearing structural member.) The agency may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days.

Section 312.151 Program Accessibility: New Construction and Alterations

Overlapping coverage exists with respect to new construction and alterations under section 504 and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 312.151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by individuals with handicaps in accordance with 41 CFR 101–19.600 to 101–19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the agency after the effective date of this regulation are not required by the regulation to meet accessibility standards simply by virtue of being leased. They are subject, however, to the program accessibility standards for existing facilities in § 312.150. To the extent the buildings are newly constructed or altered, they must also meet the new construction and alteration requirements of § 312.151.

Federal practice under section 504 has always treated newly leased buildings as subject to the existing facility program accessibility standard. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing federal facility, and the agency believes the same program accessibility standard should apply to both owned and leased existing buildings.

In *Rose* v. *United States Postal Service*, 774 F.2d 1355 (9th Cir. 1985), the Ninth Circuit held that the Architectural Barriers Act requires accessibility at the time of lease. The *Rose* court did not address the issue of whether section 504 likewise requires accessibility as a condition of lease, and the case was remanded to the District Court for, among other things, consideration of that issue. The agency may provide more specific guidance on section 504

requirements for leased buildings after the litigation is completed.

Section 312.160 Communications

Section 312.160 requires the agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § 312.160(a)(1) to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They shall also include an opportunity for individuals with handicaps to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the agency (§ 312.160(a)(1)(i)). The agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 312.160(d). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (see *supra* preamble discussion of § 312.150(a)(2)). Unless not required by § 160(d), the agency shall provide auxiliary aids at no cost to the individual with handicaps.

The discussion of § 312.150(a), Program accessibility: Existing facilities, regarding the determination of undue financial and administrative burdens, also applies to this section and should be referred to for a complete understanding of the agency's obligation to comply with § 312.160.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (*e.g.*, a meeting) or where the hearing-impaired applicant or participant is not skilled in spoken or written language. In these cases, a sign language interpreter may be appropriate. For visionimpaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to inform the public of (1) the communications services it offers in order to afford individuals with handicaps an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The agency shall ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the agency. Auxiliary aids must be afforded where necessary to ensure effective communication at the proceedings. If sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ 312.160(a)(1)(ii)). For example, the agency need not provide eyeglasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the agency to provide wheelchairs to persons with mobility impairments.

Paragraph (b) requires the agency to provide information to individuals with handicaps concerning accessible services, activities, and facilities. Paragraph (c) requires the agency to provide signage at inaccessible facilities that directs users to locations with information about accessible facilities.

Section 312.170 Compliance Procedures

Paragraph (a) specifies that paragraphs (c) through (1) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

Paragraph (c) designates the official responsible for coordinating implemention of § 312.170 and provides an address to which complaints may be sent. The agency is required to accept and investigate all complete complaints (§ 312.170(d)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal Government (§ 312.170(e)).

Paragraph (f) requires the agency to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act was designed, constructed, or altered in a manner that does not provide ready access to and use by individuals with handicaps.

Paragraph (g) requires the agency to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appeal (§ 312.170(g)). One appeal within the agency shall be provided (§ 312.170(i)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance.

Paragraph (1) permits the agency to delegate its authority for investigating complaints to other Federal agencies. However, the statutory obligation of the agency to make a final determination of noncompliance may not be delegated.

List of Subjects in 22 CFR Part 312

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Handicapped.

Accordingly, part 312 is proposed to be added to chapter III of title 22 of the Code of Federal Regulations to read as follows:

PART 312—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE PEACE CORPS

Sec.

Authority: 29 U.S.C. 794.

§ 312.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 312.102 Application.

(a) This part applies to all programs or activities conducted by the agency in the United States, but in general, not to programs or activities conducted outside the United States.

(b) Under the Peace Corps Act (22 U.S.C. 2501), the agency's programs and activities center on the recruitment and service of Volunteers overseas. By legislative charter, Volunteers are the prime agents for fulfilling the goals of the Peace Corps Act.

(c) To give meaning to the implementation of section 504 in that context and as a matter of policy without regard to any legal obligation, the agency applies this part to individuals with handicaps serving as Volunteers (and Trainees) overseas. Applicants for Volunteer service, and individuals who have accepted an invitation to serve as Volunteers are covered as persons in the United States and may enforce this part through the procedures established in 22 CFR part 306. This part makes no substantive change in the rights of members of the foreign service wherever serving.

§ 312.103 Definitions.

For purposes of this part, the term—

Agency means the Peace Corps.

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxillary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxillary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxillary aids useful for person with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons [TDDs], interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized in writing to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, vehicles, or other real or personal property.

Individual with handicaps means any person in the United States who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

Qualified individual with handicaps means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, including service as a Peace Corps Volunteer, an individual with handicaps who meets the essential eligibility requirements and who with or without reasonable accommodation can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(2) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(3) *Qualified handicapped person* as that term is defined for purposes of employment in the Equal Employment Opportunity Commission's regulation at 29 CFR 1613.702(f), which is made applicable to this part by § 312.140. Nothing in this part changes existing regulations applicable to employment.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955); the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810), the Civil Rights Restoration Act of 1987 (Pub L. 100–259, 102 Stat. 28), and the Handicapped Programs Technical Amendments Act of 1988 (Pub L. 100–630, 102 Stat. 3289) or as otherwise amended. As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

Volunteer means an individual who has accepted an invitation issued by Peace Corps for Volunteer service and has been officially accepted for Peace Corps training or has taken the oath prescribed in section 5(j) of the Peace Corps Act, as amended (22 U.S.C. 2504(j)). (Standards for the selection and assignment of Volunteers are set forth in 22 CFR part 305.)

§§ 312.104–312.109 [Reserved]

§ 312.110 Self-evaluation.

(a) The agency shall, within one year of the effective date of this part, evaluate its policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required,

the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following the completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 312.111 Notice.

The agency shall make available to Volunteers, employees, applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency or his or her designee finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this part.

§§ 312.112-312.129 [Reserved]

§§ 312.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program or activity in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of individuals without handicaps from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 312.131-312.139 [Reserved]

§ 312.140 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§§ 312.141-312.148 [Reserved]

§ 312.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 312.150, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 312.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps; or

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has

the burden of proving that compliance with § 312.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible vehicles, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section within sixty days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 312.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be easily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 312.152-312.159 [Reserved]

§ 312.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, Volunteers, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunications devices for deaf persons (TDDs) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 312.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 312.161-312.169 [Reserved]

§ 312.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap to which this part applies.

(b)(1) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the

Rehabilitation Act of 1973 (29 U.S.C. 791).

(2) The agency shall process complaints alleging violations of section 504 with respect to Volunteers and individuals who have applied to serve as Volunteers according to the procedures established in 22 CFR part 306.

(c) The Associate Director for Management shall be responsible for coordinating implementation of this section. Complaints may be sent to Associate Director for Management, Peace Corps, Washington, DC, 20526.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints other than for employees or Volunteers and individuals who have applied to serve as Volunteers must be completed and filed within 180 calendar days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have juridiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the apppropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of the remedy for each violation found; and

(3) A notice of right to appeal.

(h) Appeals of findings of fact and conclusions of law or remedies must be filed by the complainant within 90 calendar days of receipt from the agency of the letter required by § 312.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency or his or her designee shall notify the complainant of the results of the appeal within 60 calendar days of the receipt of the request. If the head of the agency or his or her designee determines that additional information is needed from the complainant, he or she shall have 60 calendar days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

Paul D. Coverdell,

Director, United States Peace Corps.

[FR Doc. 91–23948 Filed 10–7–91; 8:45 am]

BILLING CODE 6051–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–4019–3]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking [NPRM]; correction.

SUMMARY: EPA is correcting an error in an NPRM which appeared in the **Federal Register** on September 30, 1991 (56 FR 49548). In the NPRM, the Agency proposed regulations which would implement section 604 of the Clean Air Act Amendments of 1990. Section 604 requires EPA to publish regulations for the phase out the production and consumption of ozone-depleting chemicals. In the September 30, 1991 notice, EPA stated that it would conduct a public hearing on the NPRM on October 15, 1991. The Agency neglected to state that the public hearing would be held only if requested. This notice corrects that error.

FOR FURTHER INFORMATION CONTACT: David Lee, Stratospheric Ozone Protection Branch, Global Change Division, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation, ANR–445, 401 M St. SW., Washington, DC 20460, (202) 260–1497.

ADDRESSES: Information relevant to this notice is contained in Docket A–91–50 which may be viewed at the Central Docket Section, South Conference Room 4, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. the docket may be inspected from 8:30 a.m. until noon and from 1:30 p.m. until 3:30 p.m. on weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying.

SUPPLEMENTARY INFORMATION: The following correction is made in FRL 4012–1, the notice of proposed rulemaking on Protection of Stratospheric Ozone, which was published in the **Federal Register** on September 30, 1991 (56 FR 49548).

Under the heading **DATES,** the second paragraph which reads "EPA will conduct a public hearing on this NPRM on October 15, 1991 beginning at 1 p.m. The contact person listed in **FOR FURTHER INFORMATION CONTACT** may be called regarding a public hearing" is revised to read as follows:

"If a public hearing is requested, it will be held in the EPA Auditorium, 401 M St. SW., Washington, DC on October 15, 1991 from 1 p.m. to 5 p.m. All requests should be made to David Lee at (202) 260–1497, Stratospheric Ozone Protection Branch, ANR–445, 401 M St. SW., Washington, DC 20460."

Dated: October 2, 1991.

Eileen B. Claussen,

Director, Office of Atmospheric and Indoor Air Programs.

[FR Doc. 91–24200 Filed 10–7–91; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF DEFENSE

48 CFR Parts 246 and 252

Department of Defense Acquisition Regulations; Product Quality Deficiencies

AGENCY: Department of Defense (DOD).

ACTION: Withdrawal of proposed rule.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council is withdrawing a proposed rule published in the **Federal Register** on October 18, 1990 (55 FR 38341) based on its review and analysis of public comments. The proposed rule would have required contractors to investigate reported quality deficiencies after supplies had been inspected and accepted by the Government.

FOR FURTHER INFORMATION CONTACT: Ms. Valorie Lee, (703) 697–7266. Please reference DAR Case 89–73.

SUPPLEMENTARY INFORMATION: Department of Defense (DoD) logistics activities have implemented a Product Quality Deficiency Reporting (PQDR) system to track quality problems that are discovered in supplies which have been accepted and are in the DoD inventory. PQDR is the standard means by which defects or nonconforming conditions of products provided under contract are recorded and reported. Notwithstanding previous Government inspection and acceptance, after final

delivery of items under the contract, there is a need for contractors to help investigate defects and nonconforming conditions found by the Government in items delivered, as recorded on the PQDR. The proposed language was intended to specify the contractor's responsibilities under these conditions. However, comments received during the public comment period indicated that this new requirement would place a heavy burden on contractors. After a review of public comments, the DAR Council has agreed to withdraw the proposed rule from further consideration. Therefore, the proposed rule published on September 18, 1990 (55 FR 38341) is hereby withdrawn.

Claudia L. Naugle,

Executive Editor Defense Acquisition Regulatory System.

[FR Doc. 91-24202 Filed 10-7-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 533

[Docket No. 91-50, Notice 1]

Light Truck Average Fuel Economy Standards; Request for Comments

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments.

SUMMARY: This notice requests comments to assist the agency in carrying out its rulemaking responsibilities concerning average fuel economy standards for light trucks. Section 502(a) of the Motor Vehicle Information and Cost Savings Act requires NHTSA to issue light truck average fuel economy standards at least 18 months before the beginning of the model year covered by the standard. The agency has established standards through model year (MY) 1994. NHTSA now is beginning a rulemaking analysis to determine the level of light truck average fuel economy standards for model years after 1994. This notice requests information to assist in developing that analysis.

DATES: Written comments on this notice must be received on or before December 9, 1991.

ADDRESSES: Comments on this notice must refer to the docket and notice number set forth above and be submitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. Submissions containing information for which confidential treatment is requested should be submitted (3 copies) to Chief Counsel, National Highway Traffic Safety Administration, room 5219, 400 Seventh Street, SW., Washington, DC 20590, and 7 additional copies from which the purportedly confidential information has been deleted should be sent to the Docket Section.

FOR FURTHER INFORMATION CONTACT: Mr. Orron E. Kee, Chief, Motor Vehicle Requirements Division, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-0846.

SUPPLEMENTARY INFORMATION: The appendix to this notice consists of a number of questions directed toward light truck manufacturers, regarding fuel economy data for MYs 1995 through 1997. The agency recognizes that the manufacturers' product plans may not be approved formally through model year 1997 and that questions such as those on the cost of fuel economy related actions are difficult ones. The agency would appreciate responsive answers to these questions, however, so that appropriate weight can be given to the many factors whose magnitude at this time can only be estimated.

The agency currently plans to propose standards for MY 1995, MY 1996 and MY 1997 as a result of the responses to this questionnaire.

The agency would prefer to provide manufacturers with greater advance notice of future standards by proposing standards for more than one year at a time.

While the questions in the appendix are directed toward manufacturers, the agency invites comments from all interested parties. The agency is particularly interested in advancements in automotive technology which may enhance the fuel economy of light trucks in the 1995 through 1997 model years. For example, the development of two-cycle engines may have progressed to the point that their introduction to the light truck fleet would be feasible in this time frame. Another example is in the development of aluminum composites for automotive applications. These high-performance materials have become less expensive and are providing new opportunities for lightweight, high-performance automotive components. Suppliers that may furnish such advancements or organizations that are in the process of developing new technology applicable to fuel economy are urged to comment.

NHTSA is providing a 60-day comment period. It is requested that 10 copies of each response be submitted. In view of the number of questions and the detail of information requested, the agency is, waiving its usual requirement that comments "not exceed" 15 pages.

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. To the extent possible, comments filed after the closing date will also be considered. NHTSA will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

While the agency encourages the submission of information not subject to a claim of confidentiality, if a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR part 512).

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with the comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 533

Energy conservation, Gasoline, Imports, Motor vehicles.

Authority: 49 U.S.C. 1657; 15 U.S.C. 2002; delegation of authority at 49 CFR 1.50.

Issued on September 30, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

Appendix

I. Definitions

As used in this appendix

1. The terms *automobile, fuel economy, manufacturer,* and *model year,* have the meaning given them in section 501 of the Motor Vehicle

Information and Cost Savings Act, 15 U.S.C. 2001.

2. The term *basic engine* has the meaning given in 40 CFR 600.002–85(a)(21). When identifying a basic engine, respondent should provide the following information:

(i) Engine displacement (in cubic inches).

(ii) Number of cylinders or rotors.

(iii) Number of valves per cylinder.

(iv) Cylinder configuration (V, in-line, etc.).

(v) Number of carburetor barrels, if applicable.

(vi) Other engine characteristics, abbreviated as follows:

DD—Direct Injection Diesel
ID—Indirect Injection Diesel
R—Rotary
TB—Throttle Body Fuel Injection S.I. (Spark Ignition)
MP—Multipoint Fuel Injection S.I.
TD—Turbocharged Diesel
TS—Turbocharged S.I.
FFS—Feedback Fuel System
2C—Two-Cycle
OHC—Overhead camshaft
DOHC—Dual overhead camshafts

3. *Variants of existing engines* means versions of an existing basic engine that differ from that engine in terms of displacement, method of aspiration, induction system or that weigh at least 25 pounds more or less than that engine.

4. *Light truck* means an automobile of the type described in 49 CFR 523.5.

5. *Percent fuel economy improvements* means that percentage which corresponds to the amount by which respondent could improve the fuel economy of vehicles in a given model or class through the application of a specified technology, averaged over all vehicles of that model or in that class which feasibly could use the technology. Projections of percent fuel economy improvement should be based on the assumption of maximum efforts by respondent to achieve the highest possible fuel economy increase through the application of the technology. The baseline for determination of percent fuel economy improvement is the level of technology and vehicle performance with respect to acceleration and gradeability for respondent's 1992 model year light trucks in the equivalent class.

6. *Percent production implementation rate* means that percentage which corresponds to the maximum number of light trucks of a specified class which could feasibly employ a given type of technology if respondent made maximum efforts to apply the technology by a specified model year.

7. *Production percentage* means the percent of respondent's light trucks of a specified model projected to be manufactured in a specified model year.

8. *Project* or *projection* refers to the best estimates made by respondent, whether or not based on less than certain information.

9. *Relating to* means constituting, defining, containing, explaining, embodying, reflecting, identifying, stating, referring to, dealing with, or in any way pertaining to.

10. *Respondent* means each manufacturer (including all its divisions) providing answers to the questions set forth in this appendix, and its officers, employees, agents or servants.

11. *Test Weight* is used as defined in 40 CFR 86.082–2.

12. *Transmission class* is used as defined in 40 CFR 600.002–05(22)(a). When identifying a transmission class, respondent also must indicate whether the transmission is equipped with a lockup torque converter (LUTC), a split torque converter (STC), and/or a wide gear ratio range (WR) and specify the number of forward gears or whether the transmissions a continuously variable design (CVT).

13. The term *van* is used as defined in 40 CFR 86.082–2.

14. The term *cargo-carrying volume, gross vehicle weight rating* (GVWR), and *passenger-carrying volume* are used as defined in 49 CFR 523.2.

15. For the purposes of this appendix the term, *utility vehicle* means a form of light truck, either two-wheel drive (4x2) or four-wheel drive (4x4), and is exemplified by a Jeep Wrangler or Cherokee, a Chevrolet Blazer, a Dodge Ramcharger, a Ford Bronco, or a Toyota Land Cruiser.

16. *Redesign* means any change, or combination of changes, to a vehicle that would change its weight by 50 pounds or more or change its frontal area or aerodynamic drag coefficient by 2 percent or more.

17. *Domestically manufactured* is used as defined in section 503(b)(2)(E) of the Act.

18. For the purposes of this appendix, a *class* of light trucks means a group (e.g., domestically produced light trucks) for which average fuel economy standards are set.

19. For the purposes of this appendix, a *model* of light truck is a line, such as the Chevrolet C–10 or Astro, Ford F150 or E150, Jeep Wrangler, etc., which exists within a class. *Model Type* is used as defined in 40 CFR 600.002–85(a)(19).

20. *Truckline* means the name assigned by the Environmental Protection Agency to a different group of vehicles within a make or car division in accordance with that agency's 1992 model year truck, van (cargo vans and passenger vans are considered separate truck lines) and special vehicle criteria.

II. Assumptions

All assumptions concerning emission standards, damageability regulations, safety standards, etc., should be listed and described in detail by the respondent.

III. Specifications

1. Identify all light truck models currently offered for sale in MY 1992 whose production you project discontinuing before or during MY 1997 and identify the last model year in which each will be offered.

2. Identify all basic engines offered by respondent in MY 1992 light trucks which respondent projects ceasing to offer for sale in light trucks before or during MY 1997, inclusive, and identify the last model year in which each will be offered.

3. Does the respondent currently project offering for sale any new or redesigned light trucks, including vehicles smaller than those now produced during any model year 1995–1997? If so, provide the following information for each model (e.g., Chevrolet C–10, Ford F150). Model types which are essentially identical except for their nameplates (e.g., Dodge Caravan/Plymouth Voyager) may be combined into one item. See Table A for a sample format; 4x2 and 4x4 light trucks are different models.

a. Body types to be offered for sale (e.g., regular cab, super cab).

b. Description of basic engines, including optional horsepower and torque ratings, if any; displacement; number and configuration of cylinders; type of carburetor or fuel injection system; number of valves per cylinder, and whether it is 2-cycle or 4-cycle.

c. Transmission type (manual, automatic, number of forward speeds, overdrive, etc., as applicable), including gear ratios and final drive, alternative ratios offered, driveline configuration, and special features such as torque converter lockup clutches, electronic controls or CVT design.

d. (i) The range of GVW ratings to be offered for each body type.

(ii) The range of test weights for each body type.

e. All wheelbases.

f. Estimated power absorption unit (PAU) setting, in hp.

g. The range of projected EPA composite fuel economies for each body type in the initial model year of production.

h. Projected introduction date (model year).

i. Projected sales for each model year from the projected year of introduction through MY 1997, expressed both as an absolute number of units sold and as percentage of all light trucks sold by respondent.

j. If other than domestically manufactured, so state.

k. Projections of: (i) Existing models replaced by new models.

(ii) Reduced sales of respondent's existing models as a result of the sale of each of the new models.

(iii) New sales not captured from any of the respondent's existing models.

4. Does respondent project introducing any variants of existing basic engines or any new basic engines, other than those mentioned in your response to Question 3, in its light truck fleets in model years 1995–1997? If so, for each basic engine or variant indicate:

a. The projected year of introduction,

b. Type (e.g., spark ignition, direct injection diesel, 2-cycle),

c. Displacement,

d. Type of induction system (e.g., fuel injection with turbocharger, naturally aspirated, 2-barrel carburetor),

e. Cylinder configuration (e.g., V–8, V–6, I–4),

f. Number of valves per cylinder (e.g., 2, 3, 4),

g. Horsepower and torque ratings,

h. Models in which engines are to be used, giving the introduction model year for each model if different from "a," above.

5. Relative to MY 1992 levels, for MY 1995–97, please provide information, by truckline, on the weight and/or fuel economy impacts of the following standards or equipment:

a. Federal Motor Vehicle Safety Standard (FMVSS 208) Automatic Restraints.

b. FMVSS 214 Side Door Strength.

c. FMVSS 216 Roof Crush Resistance.

d. FMVSS 108 Center High-Mounted Stoplamp.

e. Voluntary installation of safety equipment (i.e., antilock brakes).

f. Environmental Protection Agency regulations.

g. California Air Resources Board requirements.

h. Other applicable motor vehicle regulations affecting fuel economy.

6. For each of the model years 1995–1997, and for each light truck model projected to be manufactured by respondent (if answers differ for the various models), provide the requested information for each of items "6a" through "6n" listed below:

(i) Description of the nature of the technological improvement;

(ii) The percent fuel economy improvement averaged over the model;

(iii) The basis for your answer to 6(ii), (e.g., data from dynamometer tests conducted by respondent, engineering analysis, computer simulation, reports of test by others);

(iv) The percent production implementation rate and the reasons limiting the implementation rate;

(v) A description of the 1992 baseline technologies and the 1992 implementation rate; and

(vi) The reasons for differing answers you provide to items (ii) and (iv) for different models in each model year. Include as a part of your answer to 6(ii) and 6(iv) a tabular presentation, a sample portion of which is shown in Table B.

a. Improved automatic transmissions. Projections of percent fuel economy improvements should include benefits of lock-up or bypassed torque converters, electronic control of shift points and torque converter lock-up, and other measures which should be described.

b. Improved manual transmissions. Projections of percent of fuel economy improvement should include the benefits of increasing mechanical efficiency, using improved transmission lubricants, and other measures (specify).

c. Overdrive transmissions. If not covered in "a" or "b" above, project the percent of fuel economy improvement attributable to overdrive transmissions (integral or auxiliary gear boxes), two-speed axles, or other similar devices intended to increase the range of available gear ratios. Describe the devices to be used and the application by model, engine, axle ratio, etc.

d. Use of engine crankcase lubricants of lower viscosity or with additives to improve friction characteristics or accelerate engine break-in, or otherwise improved lubricants to lower engine friction horsepower. When describing the 1992 baseline, specify the viscosity of and any fuel economy-improving additives used in the factory-fill lubricants.

e. Reduction of engine parasitic losses through improvement of engine-driven accessories or accessory drives. Typical engine-driven accessories include water pump, cooling fan, alternator, power-steering pump, air conditioning compressor, and vacuum pump.

f. Reduction of tire rolling losses, through changes in inflation pressure, use of materials or constructions with less hysteresis, geometry changes (e.g., increased aspect ratio), reduction in sidewall and tread deflection, and other methods. When describing the 1992 baseline, include a description of the tire types used and the percent usage rate of each type.

g. Reduction in other driveline losses, including losses in the non-powered wheels, the differential assembly, wheel bearings, universal joints, brake drag losses, use of improves lubricants in the differential and wheel bearing, and optimizing suspension geometry (e.g., to minimize tire scrubbing loss).

h. Reduction of aerodynamic drag.

i. Turbocharging or supercharging.

j. Improvements in the efficiency of 4-cycle spark ignition engines including (1) increased compression ratio; (2) leaner air-to-fuel ratio; (3) revised combustion chamber configuration; (4) fuel injection; (5) electronic fuel metering; (6) interactive electronic control of engine operating parameters (spark advance, exhaust gas recirculation, air-to-fuel ratio); (8) variable valve timing or valve lift; (9) multiple valves per cylinder; (10) friction reduction by means such as low tension piston rings and roller cam followers; (11) higher temperature operation; and (12) other methods (specify).

k. Naturally aspirated diesel engines, with direct or indirect fuel injection.

l. Turbocharged or supercharged diesel engines with direct or indirect fuel injection.

m. Stratified-charge reciprocating or rotary engines, with direct or indirect fuel injection.

n. Two cycle spark ignition engines.

7. For each model of respondent's light truck fleet projected to be manufactured in each of model years 1995–1997, describe the methods used to achieve reductions in average test weight. For each specified model year and model, describe the extent to which each of the following methods for reducing vehicle weight will be used. Separate listings are to be used for 4x2 light trucks and 4x4 light trucks.

a. Substitution of materials.

b. "Downsizing" of existing vehicle design to reduce weight while maintaining interior roominess and comfort for passengers and, and utility, i.e., the same or approximately the same, payload and cargo volume, using the same basic body configuration and driveline layout as current counterparts.

c. Use of new vehicle body configuration concepts which provides reduced weight for approximately the same payload and cargo volume.

8. For each model year 1995, 1996, and 1997, list all projected light model types and provide the information specified in "a" through "k" below for each model type.

The information should be in tabular form, with a separate table for each

model year. Domestic and non-domestic model types are to be listed separately. Each of the two groupings is to be subdivided into separate listings for models with 4x2 and 4x4 drive systems. Engines having the same displacement but belonging to different engine families are to be grouped separately.

The vehicles are to be sorted first by truckline, second by basic engine, and third by transmission type. For these groupings, the average test weights are to be placed in ascending order. List the categories in terms "a" through "k" below in the order specified from left to right across the top of the table. Include in the table for each model year the total sales-weighted harmonic average fuel economy and average test weight for imported and domestic light trucks for each truckline and for all of the respondent's light trucks.

a. Truckline, e.g., C–10, F–150, B–150. Model types which are essentially identical except for their nameplates (e.g., Chevrolet S–10/GMC S–15 and Dodge Caravan/Plymouth Voyager) may be combined into one line item.

b. Light truck vehicle type, e.g., compact pickup, cargo van, passenger van, utility, truck-based station wagon, and chassis cab. Other light truck designations, which are adequately defined, can be used if these are not suitable.

c. Basic engine: Include the engine characteristics used in Definition 2.

d. Transmission class (e.g., A3, L4, A40D, M5, CVT): Include the characteristics used in Definition 13.

e. Average ratio of engine speed to vehicle speed in top gear (N/V), rounded to one decimal place.

f. Average test weight.

g. Average PAU setting: Provide the value and show whether the value (or estimated value) is based on coastdown testing (T) or calculated from the vehicle frontal area (C). Round the PAU value to one decimal place.

h. Air conditioning: Y=air conditioning installation are projected to exceed 33 percent of the vehicles described in the line item; N=air conditioning installations are projected to be less than 33 percent of the vehicles described in the line time.

i. Composite fuel economy (Sales weighted, harmonically averaged over the specified vehicles, rounded to the nearest 0.1 mpg).

k. Projected sales for the vehicles described in each line time.

9. For each transmission identified in response to 8(d) above, provide a listing showing whether the transmission is manual or automatic, the gear ratios for the transmission, and the models which used the transmission.

10. Indicate any MY 1995–1997 light truck model types which have higher average test weights than comparable MY 1992 model types. Describe the reasons for any weight increases (i.e., increased option content, less use of premium materials).

11. For each new or redesigned vehicle identified in response to Question 3 and each new engine or fuel economy improvement identified in your response to Questions 3, 5, and 6, provide your best estimate of the following, in terms of constant 1992 dollars:

(a) Total capital costs required to implement the new/redesigned model or improvement according to the implementation schedules specified in your response. Subdivide the capital costs into tooling, facilities, launch, and engineering costs.

(b) The maximum production capacity, expressed in units of capacity per year, associated with the capital expenditure in (a) above. Specify the number of production shifts on which your response is based and define "maximum capacity" as used in your answer.

(c) The actual capacity that will be used each year for each new/redesigned model or fuel economy improvement.

(d) The increase in variable costs per affected unit, based on the production volume specified in (b) above.

(e) The equivalent retail price increase per affected vehicle for each new/redesigned model or improvement. Provide an example describing methodology used to determine the equivalent retail price increase.

12. Please provide respondent's actual and projected U.S. light truck sales, 4x2 and 4x4, 0–8,500 lbs. GVWR and 8501–10,000 lbs., GVWR for each model year from 1992 thorough 1997, inclusive. Please subdivide the data into the following vehicle categories:

i. Standard Pickup Heavy (e.g., C–20/30, F–250/350, D–250/350)

ii. Standard Pickup Light (e.g., C–10, F–150, D–100)

iii. Compact Pickup (e.g., S–10, Ranger)

iv. Standard Cargo Vans Heavy (e.g., G–30, E–250/350, B–350)

v. Standard Cargo Vans Light (e.g., G–10/20, E–150, B–150/250)

vi. Standard Passenger Vans Heavy (e.g., G–30, E–250/350, B–350)

vii. Standard Passenger Vans Light (e.g., G–10/20, E–150, B–150/250)

viii. Compact Cargo Vans (e.g., Astro, Aerostar, Mini Ram Van)

ix. Compact Passenger Vans (e.g., Astro, Aerostar, Voyager)

x. Standard Utilities (e.g., K1500 Blazer, Bronco, Ramcharger)

xi. Compact Utilities (e.g., S–10 Blazer, Bronco II, Wrangler)

xii. Other (e.g., Suburban, Loyale)

Provide separate tables for domestic and captive imports or vehicles with less than 75 percent domestic content. See Table C for a sample format.

13. Please provide your estimates of projected total industry U.S. light (0–10,000 lbs, GVWR) truck sales for each model year from 1992 through 1997, inclusive. Please subdivide the data into 4x2 and 4x4 sales and into the vehicle categories listed in the sample format in Table D.

14. Please provide your company's assumptions for U.S. gasoline and diesel fuel prices during 1991 through 1997.

15. Please provide projected production capacity available for the North American market (at standard production rates) for each of your company's light truckline designations during model years 1991–1997.

16. Please provide your estimate of production leadtime for new models, your expected model life in years, and the number of years over which tooling costs are amortized.

TABLE A—[MODEL: LT–1B DRIVELINE CONFIGURATION: 4x2: FRONT ENGINE/REAR DRIVE]

	Pass. Volume	No. Seating pos.	Cargo Vol.	e. Wheel Base	f. Power absor. Unit Setting hp
a. Body Types:					
Regular Cab. Short Bed	XFt³	3	yft³	115	8.0
Regular Cab. Long Bed	XTt³	3	Zft³	133	8.5
Extended Cab. Long Bed	X1ft³	4	Zft³	151	8.5
Crew Cab. Long Bed	X2ft³	6	Zft³	170	9.0

	C/D	Conf/No. Cyl	Hp/rpm	Torque
b. Basic Engines:				
235	V6	2V	x/3600	Y/1800
310	V6	2V		
340[2]	V6	4V		
340[2]	V6	MP		

[1] Not available with crew cab.
[2] Available only with HD 4-speed manual transmission or automatic transmission.

Manual 3-speed[1]	Manual Overdrive[1]	Automatic	HD Manual 4-Speed
c. Transmission Types:			
1 3.00	1 3.00	1 2.50	1 6.50
2 1.75	2 1.75	2 1.50	2 3.60
3 1.00	3 1.00	3 1.00	3 1.80
R 3.15	4 .80	R 1.90	4 1.00
	R 3.12	TC 2.1	R 6.10
RAR 3.23/3/54/3.73	3.54/3.73	3.23/3.54	3.23/3.54/3.73

[1] Not available with 340 CID V8 engines.

		Range of Test Weights
d. Range of GVWR:		
6,050 to 7,000	Reg. Cab, Short Bed	4,250–4,500
6,050 to 7,200	Reg. Cab, Long Bed	4,250–4,500
6,300 to 7,400	Extended Cab, Long Bed	4,500–5,000
6,300 to 7,400	Crew Cab, Long Bed	4,500–5,000

	Range of Composite Fuel Economy Ratings for Introduction Year
h. Fuel Economy Values	
Reg. Cab, Short Bed	14.0–16.0
Reg. Cab, Long Bed	13.8–15.8
Extended Cab, Long Bed	13.5–15.4
Crew Cab, Long Bed	13.0–15.1
i. and j. Projected introduction and Sales Through My 1997:	
1995 (1)[2]	36,000
1996[3]	78,000
1997	110,000
k. To be completed only if domestically manufactured.	
l. (i) Redesigned; replaced LT–1A.	
(ii) The extended cabl introduced in MY 1995 is expected to capture 15,000 passenger station wagon sales.	
(iii) The extended cab in (ii), above is expected to capture a like amount of sales from competitors in each model year.	

[2] Mid-year introduction.
[3] Extended cab introduced.

TABLE B.—TECHNOLOGY IMPROVEMENTS

Technological Improvement	Percent Fuel Economy Improvement	Percent Production Penetration					
		1992	1993	1994	1995	1996	1997
5 (a) Improved Auto Transmissions:							
LT–1	10.0	0	0	0	14	15	15
LT–2	8.0	0	0	0	14	15	15
Lt–3	7.5	0	0	0	8	10	10
LT–1	10.0	0	0	0	20	20	20
LT–2	9.0	0	0	0	20	20	20
LT–3	7.5	0	0	0	10	12	12
U–1	10.0	0	0	0	14	15	15
5 (b) Improved Manual Transmissions:							
LT–1	4.0	0	0	0	35	35	35
LV–1	4.0	0	0	0	30	30	30
LV–2	4.0	0	0	0	30	30	30
U–1	4.0	0	0	0	35	35	35
5(c) Overdrive Transmission:							
LT–1	6.0	0	0	0	6	8	8
LV–1	6.0	0	0	0	5	6	6
LV–2	6.0	0	0	0	5	6	6
U–1	6.0	0	0	0	8	10	10

TABLE C.-A JAX 4x2 DOMESTIC LIGHT TRUCK SALES

	Model Year						
	1991	1992	1993	1994	1995	1996	1997
0-8,500 lbs. GVWR	509,379						
Standard Pickup Heavy	43,500						
Standard Pickup Light	120,000						
Compact Pickup	60,000						
Standard Cargo Van Heavy	20,000						
Standard Passenger Van Heavy	29,310						
Standard Passenger Van Light	54,196						
Compact Cargo Van	38,900						
Compact Passenger Van	30,000						
Standard Utilities	53,800						
Compact Utilities	44,000						
Other	5,673						
8,501-10,000 lbs. GVWR	5,500						
Standard Pickup Heavy	4,000						
Standard Utilities	1,000						
Other	500						
Grand Total	514,879						

TABLE D.—TOTAL U.S. TRUCK SALES

	1991		1992		1993		1994		1995		1996		1997	
	Dom.	Imp.	Dom.	Imp.	Dom.	Imp.	Dom.	Imp.	Dom.	Imp.	Dom.	Imp.	Dom.	Imp.
1. Light Trucks (4X2)														
a. Pickup														
1. Compact														
2. Small Car Based														
3. Large Car Based														
4. Standard														
b. Passenger Vans (Bus):														
1. Compact														
2. Standard														
c. Cargo Vans														
1. Compact Standard														
2. Standard														
d. Utilities														
1. Compact														
2. Standard														
3. Car Based														
e. Truck Based Station														
Wagons														
Other														
2. Light Truck (4X4) [Same breakout as 4X2]														
3. Total Light Trucks (4X2+4X4)														

[FR Doc. 91-24015 Filed 10-7-91 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB32

Endangered and Threatened Wildlife and Plants; Proposed Determination of Critical Habitat for the Northern Spotted Owl

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised Proposed Rule; Correction.

SUMMARY: The Fish and Wildlife Service (Service) corrects several errors in the legal descriptions of proposed critical habitat units for the northern spotted owl. In a proposed rule published on Wednesday, August 13, 1991, errors were made in the legal descriptions of the critical habitat units. This notice corrects those errors. Critical habitat still occurs primarily on Federal lands, and to a lesser extent on State lands. This correction does not substantially change the scope and intent of the proposed rule published on August 13, 1991.

DATES: Comments from all interested parties must be received by October 15, 1991.

ADDRESSES: Comments and materials concerning this correction and the proposed rule published August 13, 1991, should be sent to the Assistant Regional Director, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, 911 NE. 11th Ave., Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Hall, Assistant Regional Director, Fish and Wildlife Enhancement at the above address (503/231-6159 or FTS 429-6159), or Mr. Barry S. Mulder, Spotted Owl Coordinator, at the above address (503)/231-6730 or FTS 429-6730).

Correction

In the proposed rule document 91-18889 beginning on page 40001 in the issue of Tuesday, August 13, 1991, make the following corrections:

§ 17.95 [Corrected]

1. On page 40036 in column 1, make the following corrections:

a. Line 4 should read: "California; and The U.S. Forest Service Six Rivers National Forest Visitors Map 1984."

b. Lines 29, 30 and 31 from top should read: "T. 15 N., R. 4 E., Unsurveyed Lands, Secs. 5, 6, 7, 8, 18, 19, 20, and 23 of the Humboldt Meridian."

c. Lines 32, 33 and 34 from the top should read: "T. 14 N., R. 3 E., Unsurveyed Lands, Secs. 4, 5, 6, 10, 15, 25, 26, 34, 35, and 36, of the Humboldt Meridian."

d. Lines 35, 36 and 37 from the top should read: "T. 14 N., R. 4 E., Unsurveyed Lands, Secs. 1, 27, 31, 32, 33, 34, and 35, of the Humboldt Meridian."

e. Lines 38, 39 and 40 from the top should read: "T. 13 N., R. 3 E., Unsurveyed Lands, Secs. 3, 25, 26, 27, 34, 35, and 36, of the Humboldt Meridian."

f. Lines 41, 42, 43 and 44 from the top should read: "T. 13 N., R. 4 E., Unsurveyed Lands, Secs. 1, 2, 3, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, of the Humboldt Meridian."

2. On page 40037 in column 1, make the following corrections:

a. Line 3 from the top, should read: "Hoopa 1983, California and U.S. Forest Service Six Rivers National Forest Visitors Map 1984."

b. Lines 23, 24 and 25 from the top should read: "T. 11 N., R. 6 E., Unsurveyed Lands, Secs. 3, 4, 5, 6, 7, 8, 18, and 19, of the Humboldt Meridian."

3. On page 40039 in column 1, make the following corrections:

a. Line 4 should read: Oregon, and U.S. Forest Service Klamath National Forest Visitors Map 1988.

b. Line 22 from the top should read: "Secs. 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21,".

c. Line 44 from the top should read: "7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21,".

4. On page 40040 in column 1, make the following corrections: Lines 6, 7 and 8 from the top should read: T. 16 N., R. 8 E., Unsurveyed Lands Secs. 9, 10, 15, 16, 21, 22, 27, 28, 33, and 34, of the Humboldt Meridian.

5. On page 40041 in column 1, make the following corrections:

a. Line 13 from the bottom, should read: Happy Camp 1983 and Hoopa 1983.

b. Line 4 should read: California, and U.S. Forest Service Klamath National Forest Visitors Map 1988.

c. Lines 10, 11 and 12 from the top should read: T. 14 N., R. 6 E., Secs. 13, 14, 15, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, and 36, of the Humboldt Meridian.

d. Lines 17, 18 and 19 from the top should read: T. 14 N., R. 8 E., Unsurveyed Lands, Secs. 7, and 8, of the Humboldt Meridian.

6. On page 40041 in column 3, make the following corrections: Lines 1, 2 and 3 from the top should read: T. 40 N., R. 12 W., Unsurveyed Lands, Secs. 1, 2, 3, 10, 11, 12, 13, 14, 15, 16, 17, 18, 23, and 24, of the Mt. Diablo Meridian.

7. On page 40042 in column 1, make the following corrections:

a. Line 4 should read: California, and U.S. Forest Service Klamath National Forest Visitors Map 1988.

b. Lines 9, 10, 11 and 12 from the top should read: T. 41 N., R. 10 W., Unsurveyed Lands, Secs. 2, 3, 4, 5, 8, 9, 10, 11, 14, 15, 16, 20, 21, 22, 23, 24, 28, 29, 31, 32, and 33, of the Mt. Diablo Meridian.

c. Lines 13, 14 and 15 from the top should read: T. 40 N., R. 11 W., Unsurveyed Lands, Secs. 13, 25, 26, 31, 34, 35, and 36, of the Mt. Diablo Meridian.

d. Lines 16, 17, 18 and 19 from the top should read: T. 40 N., R. 10 W., Unsurveyed Lands, Secs. 4, 5, 6, 7, 8, 9, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, of the Mt. Diablo Meridian.

e. Lines 32, 33 and 34 from the top should read: T. 38 N., R. 12 W., Unsurveyed Lands, Secs. 1, 10, 11, 12, 13, 14, 15, 22, 23, and 24, of the Mt. Diablo Meridian.

f. Delete lines 5 and 6 from the bottom of the page.

8. On page 40043 in column 1, make the following corrections:

a. Line 4 should read: California, and U.S. Forest Service Trinity National Visitor Map 1987.

b. Line 7 and 8 from top should read: "12, 13, 14, 23, 24, 25, 26, 35, and 36 of the Humboldt Meridian.".

c. Line 10 from top should read: "Secs. 7, 8, 16, 17, 18, 19, 20, 21, 28".

d. Line 18 from top insert "26," after "23,".

e. Line 21 from top should read: "Secs. 1, 2, 3, 11, 12, 13, and 14, of the".

f. Line 24 from the top delete "1" after "Secs.".

g. Line 29 from the top delete "12, 13," after "11,".

h. Line 31 from the top should read: "32, 33, 34, and 35, of the Humboldt".

i. Line 34 from the top should read: "Secs. 18, 19, and 30 of the".

j. Line 42 from the top insert "30, 31," after "29,".

k. Line 45 from the top delete "20, 23," after "19,".

l. Line 51 from the top insert "13," after "6,".

m. Line 14 from the bottom of the page delete: "29, 30, 31, and" after "Secs.".

n. Delete lines 10, 11 and 12 from the bottom.

o. Line 3 from the bottom insert the words "north of Highway 299" after "21,".

p. Line 2 from the bottom insert the words "north of Highway 299" after

each of the numbers "26, 27, 28, 34, 35, and 36".

9. On page 40043 in column 2, line 4 from the top insert the words "north of Highway 299" after each of the numbers "1," and "12,".

10. On page 40043 in column 3, line 1 from the top insert the words "north of Highway 299" after each of the numbers "7 and 8".

11. On page 40045 in column 1, line 23 from the top should read: 34, 35, and 36, of the Mt. Diablo Meridian.

12. On page 40046 in column 1, make the following corrections:

a. Line 11 from the bottom of the page should read: California, and U.S. Forest Service Klamath National Forest Visitors Map 1988.

b. Line 8 from the bottom of the page should read: Sec. 25, and 35, of the Mt. Diablo.

c. Line 5 from the bottom of the page delete: 22 and 25, after "21" and insert "29".

13. On page 40049 in column 1, make the following corrections: Line 9 from the bottom of the page insert "20," after "19,".

14. On page 40052 in column 1, following line 13 from the top insert a line that reads: "T. 39 N., R. 8 W., Sec. 1 of the Mt. Diablo Meridian.".

15. On page 40054 in column 1, line 29 from the top, delete "33," after "32,".

16. On page 40055 in column 1, make the following corrections:

a. Line 4 following the middle of the page, should read: California, and Ukiah BLM District King Range Conservation Area Management Program Map 1974.

b. Delete lines 6 through 37 and replace them with the following:

T. 3 S., R. 2 W., Sec. 12, 13, of the Humboldt Meridian.

T. 3 S., R. 1 W., Secs. 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 36, of the Humboldt Meridian.

T. 3 S., R. 1 E., Secs. 18, 19, 29, 30, 31, and 32, of the Humboldt Meridian.

T. 4 S., R. 1 E., Secs. 4, 5, 6, 8, 9, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 34, 35, and 36, of the Humboldt Meridian.

T. 4 S., R. 2 E., Secs. 30, and 31, of the Humboldt Meridian.

T. 5 S., R. 1 E., Secs. 1, 2, 3, 11, 12, and 13, of the Humboldt Meridian.

T. 5 S., R. 2 E., Secs. 5, 6, 7, 8, 17, 18, and 20, of the Humboldt Meridian.

Excluding from the above areas any lands within the King Range National Conservation Area Management Units 1, 2, 3, 4, and 5, and any private lands.

17. On page 40056 in column 1, line 4 from the bottom should read: "T. 7 N., R. 4 E., Sec. 18 the the".

18. On page 40058 in column 1, line 7 from the bottom should read: "T. 3 S., R. 1 E., Secs. 12, 13, and 24,".

19. On page 40059 in column 1, line 7 from the top should read: "T. 5 S., R. 5 E., Secs. 2, 3, and 4, and 4, of the".

20. On page 40060 in column 1, line 7 from the top should read: "T. 21 N., R. 13 W., Secs. 3, and 4, of the".

21. On page 40062 in column 1, make the following corrections:

a. Line 13 from the bottom should read: "22, 23, 26, 27, and 35, of the Humboldt".

b. Line 7 from the bottom should read: "T. 24 N., R. 13 W., Secs. 1, 2, 11, and 12,".

22. On page 40066 in column 1, make the following corrections:

a. Line 3 from the top, insert: "Red Bluff 1983, Covelo 1981, Willows 1984," after "Garberville 1979,".

b. Line 26 from the bottom of the page insert "and 32," after "31,".

c. Line 19 from the bottom of the page should read: "31, and 32, of the Mt. Diablo".

d. Line 18 from the bottom should read: "of the Mt. Diablo Meridian.".

e. Line 17 from the bottom should read: "T. 27 N., R. 9 W., Secs. 20, and 21,".

f. Line 16 from the bottom should read: "of the Mt. Diablo".

g. Line 14 from the bottom delete "21," after "15,".

h. Line 13 from the bottom should read: and 34, of the Mt. Diablo Meridian.

i. Line 11 from the bottom should read: "T. 26 N., R. 11 W., Secs. 5, and 7, of".

j. Line 10 from the bottom should read: "of the Mt. Diablo Meridian.".

k. Line 9 from the bottom should read: "T. 26 N., R. 10 W., Sec. 6 of".

l. Lines 7 and 8 from the bottom should read: "of the Mt. Diablo Meridian.".

m. Delete lines 1 through 6 from the bottom of the page.

23. On page 40066 in column 2, make the following corrections:

a. Line 1 from the top, should read: "T. 25 N., R. 11 W., Secs. 9,".

b. Line 2 from the top, delete "25" after "24,".

c. Line 4 from the top, should read: "T. 25 N., R. 10 W., Secs., 7, 8,".

d. Line 5 from the top, should read: "18, 19, 31, and 32, of the".

24. On page 40066 in column 3, delete lines 1 and 2 from the top of the page.

Line 2 and 3 from the bottom, should read: "land within the Yolla Bolly/ Middle Eel Wilderness and Big Butte Wilderness, and any".

25. On page 40067 in column 1, line 20 from the top, insert: "north of highway 299" after "35,".

26. On page 40069, in column 1, on line 16 from the bottom insert "," after the word "California" and delete "and Forest Visitor Map: Siskiyou National Forest 1984.".

27. On page 40070, in column 1, make the following corrections:

a. Line 14 from the bottom change the word "Map" to "Maps".

b. Line 13 from the bottom delete the word "Surface".

c. Line 12 from the bottom delete the word "Mineral Management Map;".

28. On page 40073, in column 1, on line 4 from the top, should read: "Douglas and Josephine Counties".

29. On page 40075, in column 1, make the following changes:

a. Line 2 from the top, change the word "Map" to "Maps".

b. Line 3 and 4 from the top, should read: "Grants Pass 1978, Oregon and California", ; and "Medford 1978, Oregon.".

31. On page 40077, in column 1, make the following changes:

a. Line 3 from the top, insert the word "and" "Vancouver 1979,".

b. Line 5 from the top, insert the word "and" "1974,".

c. Line 14 from the top, the number "16," before "17,".

d. After line 19 from the top, insert a line that reads: "T. 2 N., R. 6 E., Secs. 35 and 36 of the Willamette Meridian.".

31. On page 40078, in column 1, make the following changes:

a. Line 22 from the top, should read "27, 28, 29, and 30, of the Willamette Meridian.".

b. Line 7 through 12, from the bottom, should be split into 2 paragraphs; break the paragraph on line 10 from the bottom after the word "Meridian".

32. On page 40079 in column 1, lines 22 through and 26 from the top, should be split into 2 paragraphs, on line 24, after "Meridian".

33. On page 40080 in column 1, lines 24 through and 28 from the top, should be split into 2 paragraphs, on line 24, after "Meridian".

34. On page 40082 in column 1, on line 21 from the top insert the number "13," between "12, 14,".

35. On page 40084 in column 1, line 27 from the top, should read: "T. 20 S., R. 6 E., Secs. 6 and 7, of".

36. On page 40086 in column 1, line 23 from the top should read: "21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32,".

37. On page 40087 in column 1, make the following changes: a. Line 2 from the top, delete the word "Surface".

b. Line 3 from the top, delete the words "and/or Mineral Management".

38. On page 40089 in column 1, make the following changes:

a. Line 12 from the top, delete "20" and add "23," after "22,".

b. Line 17 from the bottom, should be moved up to adjoin line 18 from the bottom.

39. On page 40091 in column 1, line 18 from the top, delete the numbers "30, 31,".

40. On page 40091 in column 3, line 2 from the bottom, add the words "Mountain Lakes Wilderness".

41. On page 40092 in column 1, line 16 from the top, delete the number "17," after "Secs.".

42. On page 40093 in column 1, make the following changes:

a. Line 3 from the top, insert the word "Oregon" after "Gold Beach 1978," and the phrase "Crescent City 1983," after "Grants Pass 1978;".

b. Line 4 delete the words "and Forest".

c. Line 5 delete the words "Visitor Map; Siskiyou National Forest".

d. Line 6 delete the "1984".

43. On page 40093 in column 1, line 29 from the bottom needs to have the word "and" inserted before "Canyonville" and "Oregon" inserted after the "1979".

44. On page 40094 in column 1, line 12 from the top, insert "32" after "31,".

45. On page 40095 in column 1, make the following corrections:

a. Line 12 from the top, delete "14,".

b. Line 13 from the top, delete "27,", "32,", "33,".

46. On page 40096 in column 1, make the following corrections:

a. Line 2 from the top "map" should be "maps".

b. Line 5 delete "Jackson and Josephine".

c. Line 6 change the word "Counties" to "County".

d. Lines 4 and 3 from the bottom, should read: "Meridian.

T. 32 S., R. 8 W., Sec. 25, of the Willamette Meridian."

47. On page 40097 in column 1, make the following corrections:

a. Line 2 from the top, delete the word "Surface".

b. Line 3 from the top, delete "Mineral Management".

c. Line 4 from the top, change year from "1983" to "1979".

d. Line 33 from the bottom, change the word "Map" to "Maps".

48. On page 40099 in column 1, line 8 from the top, should NOT be indented and should be a continuation of line 7.

49. On page 40101 in column 1, make the following corrections:

a. Line 5 delete words "and Benton" and change the word "Counties" to "County".

b. Line 17 from the bottom delete number "22,".

50. On page 40103 in column 1, line 11 from the top, should not be indented and actually start on line 10 directly following "16,".

51. On page 40105 in column 1, make the following corrections:

a. Line 12 from the top the word "Meridian" should follow the word "Willamette" on line 11 and not be indented.

b. Line 6 from the bottom, should read: "9, 10, 14, 15, 16, 17, 21, 22, 23, and 28, of the".

52. On page 40106 in column 1, line 5 from the top, insert "11." after "2,".

53. On page 40107 in column 1, make the following corrections:

a. Line 24 from the bottom, insert the words "and Washington." after the word "Oregon".

b. Line 3 from the bottom, delete the words "for the Columbia White Tall" and insert the words "National Wildlife" before the word "Refuge".

c. Line 2 from the bottom, delete the words "Deer area".

54. On paper 40109 in column 1, line 2 from the bottom, delete the word "Siuslaw" and insert before the word "Wilderness" the words "Cummins Creek Wilderness, Big Creek".

55. On page 40111 in column 1, line 11 from the bottom, delete the words "Surface Mineral Management".

56. On page 40116 in column 1, line 13 from the top delete "4, 5," after "Secs."

57. On page 40117 in column 1, line 23 and 24 from the bottom of the page, should read: "T. 32 N., R. 8 E., Secs., 1, 3, 4, 5, and 6, of the"

58. On page 40119 in column 1, line 23 from the bottom of the page. replace the word "Quadrangle" with the word "Map".

59. On page 40120 in column 1, make the following corrections:

a. Line 3 from the top, replace the word "Quadrangle" with the word "Map".

b. Line 18 from the bottom, insert "Maps" after "Resources.".

c. Line 8 from the bottom, insert "2" after "Secs.".

60. On page 40121 in column 1, make the following corrections:

a. Line 22 from the top, delete the word "any".

b. Delete line 23 from the top.

c. Line 30 from the bottom, should read: "and 23, of the Willamette Meridian".

d. Line 28 from the bottom, delete "15," after "14,".

61. On page 40122 in column 1, line 3 from the top, replace the word "Quadrangle" with the word "Map".

62. On page 40124 in column 1, line 3 from the top, replace the word "Quadrangles" with the word "Maps".

63. On page 40124 in column 3, make the following corrections:

a. Line 6 from the top, insert "18," after "17,".

b. Following line 9 from the top, insert new line that reads: "T. 24 N., R. 3 E., Secs. 5, and 6, of the Willamette meridian."

c. Line 21 from the top, insert "7," after "4,".

d. Iine 31 from the top, insert "1," after "Secs.".

e. Iine 53 from the top, delete "1," after "Secs.".

f. Line 1 from the bottom, insert "and tribal" between the words "private" and "lands".

64. On page 40125 in column 1, line 3 fron the top, replace the word "Quadrangle" with the word "Map".

65. On page 40126 in column 1, make the following corrections:

a. Line 28 from the bottom, delete "16," after "15,".

b. Line 27 from the bottom, delete "33," after "28,".

c. Delete lines 25 and 24 from the bottom.

d. Line 23 from the bottom, delete "4," after "3,".

e. Line 22 from the bottom, delete "21," after "15," and delete "28," after "27,".

f. Line 21 from the bottom, delete "34," before "35,".

g. Line 19 from the bottom, delete "5, 6," after the word "Secs.".

66. On page 40128 in column 1, make the following corrections:

a. Line 5 from the top, replace the word "Quadrangle" with the word "Map".

b. Line 29 from the top, insert the word "Wilderness" between the words "Peak" and "Henry".

c. Line 21 from the bottom, replace the word "Quadrangle" with the word "Map".

67. On page 40129 in column 1, make the following corrections:

a. Line 14 from the top, insert "2," after "Secs.".

b. Below line 4 from the bottom, insert a new line that reads: "T. 23 N., R. 18 E., Sec., 6, of the Willamette Meridian."

68. On page 40130 in column 1, make the following corrections:

a. Line 12 from the top insert "and 24," after "23,".

b. Line 13 from the top, delete "25," before "of".

69. On page 40131 in column 1, make the following corrections:

a. Line 12 from the bottom, insert "25," after "24,".

b. Line 10 from the bottom, should read: "T.16 N., R. 13 E., Secs. 5, 6, and 7, of the".

c. Line 5 from the bottom, insert "28," after "21,".

70. On page 40132 in column 1, make the following corrections:

a. Line 13 from the bottom, delete "3, 11," after "2,".

b. Line 11 from the bottom, insert "10, 11," after "9,".

c. Line 10 from the bottom, insert "27," after "23,".

d. Line 3 from the bottom, should read: "lands within the Goat Rocks Wilderness, William O.".

71. On page 40133 in column 1, line 33 from the bottom, replace the word "Quadrangle" with the word "Map".

72. On page 40135 in column 1, line 2 from the top, replace the word "Public" with the word "Natural".

73. On page 40136 in column 1, make the following corrections:

a. Line 3 from the top, replace the word "Quadrangle" with the word "Map".

b. Line 5 from top, insert "Oregon-" before "Washington".

74. On page 40137 in column 1, make the following corrections:

a. Line 3 from the top replace the word "Quandrangle" with the word "Map".

b. Delete line 31 from the top.

c. Line 32 from the top, delete the words "The Nisqually River, any".

75. On page 40138 in column 1, make the following corrections:

a. Line 6 from the top, insert "21," after "20,".

b. Line 13 from the top, insert "2," after "Secs.,".

c. Line 19 from the top, insert "21," after "20,".

d. Line 47 from the top, should read: "8, 9, 10, 13, 14, 22, 23, 24, 25, 26, 27, 34, 35, and 36,".

e. Delete lines 48 and 49 from the top.

f. Line 50 from the top, delete "22," before "of,".

76. On page 40139 in column 1, make the following corrections:

a. Line 3 from the top, replace the word "Quadrangle" with the word "Map".

b. Following line 18 from the top, insert a line that reads: "T. 11 N., R. 5 E., Secs., 11, 12, and 13, of the Willamette Meridian.

77. On page 40140 in column 1, line 3 from the top, replace the word "Quadrangle" with the word "Map".

78. On page 40141 in column 1, make the following corrections:

a. Line 19 from the top, insert the word "and" after "24".

b. Line 20 from the top, delete "and 36," before "of".

79. On page 40141 in column 3, line 4 from the top, delete "the Columbia River".

80. On page 40142 in column 1, following line 6 from the top, insert a line that reads: "T. 7 N., R. 5 E., Secs. 6, and 7, of the Willamette Meridian.".

81. On page 40143 in column 1, line 4 from the top, delete the word "Pierce" between the words "Thurston" and "and Lewis Counties".

Dated: October 2, 1991.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 91-24122 Filed 10-7-91; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 56, No. 195
Tuesday, October 8, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[LS-91-008]

Soybean Promotion and Research; Board and State Soybean Board Addresses

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: This document provides the address of the United Soybean Board established pursuant to the Soybean Promotion, Research, and Consumer Information Act, and the addresses of the 29 Qualified State Soybean Boards.

FOR FURTHER INFORMATION CONTACT: Ralph Tapp, Chief; Marketing Programs Branch; Livestock and Seed Division; AMS, USDA, room 2624–S; P.O. Box 96456; Washington, DC 20090–6456. (Telephone: 202/382–1115).

SUPPLEMENTARY INFORMATION: Pursuant to the Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6301 et. seq.), a Soybean Promotion and Research Order (Order) was published in the July 9, 1991, **Federal Register** (56 FR 31043). Regulations implementing the Order were published in the August 30, 1991, issue of the **Federal Register** (56 FR 42923).

The Order and regulations provide that beginning September 1, 1991, soybeans marketed by producers in the United States are subject to an assessment of 0.5 of one percent of the net market price. First purchasers who collect assessments from producers under the Order and regulations are required to remit them to the Qualified State Soybean Board of the State where the first purchasers are located or to the United Soybean Board (Board) if there is no Qualified State Soybean Board in the State where they are located.

Producers may request refunds of assessments from the Qualified State Soybean Board of the State where the soybeans were grown in accordance with State law or regulations authorizing the payment of refunds in that State. If a producer markets soybeans grown in a State which does not have a Qualified State Soybean Board, the producer may request refunds from the Board.

This Notice provides the addresses of the Board and Qualified State Soybean Boards. It should be noted that many of the Qualified State Soybean Boards have one address for inquiries and general business and one address for remitting assessments and requesting refunds.

The address of the Board of inquiries and general business and requests for refunds is United Soybean Board; P.O. Box 410977; Creve Coeur, Missouri 63141–1367. The address for remitting assessments is: P.O. Box 954591; St. Louis, Missouri 63195–4591.

Inquiries and general business	Remit assessments and accompanying reports to	Request refunds from
Alabama Soybean Producers Board, c/o Alabama Farmers Federation, 2108 E.S. Blvd., Box 11000, Montgomery, AL 36191.	Alabama Soybean Producers Board, c/o Alabama Department of Agriculture & Industries, Marketing Division, P.O. Box 3336–0336, Montgomery, AL 36109–0336.	Alabama Soybean Producers Board, c/o Alabama Farmers Federation, 2108 E.S. Blvd., Box 11000, Montgomery, AL 36191.
Arkansas Soybean Promotion Board, P.O. Box 31, Little Rock, AR 72203.	Arkansas Soybean Promotion Board, c/o Arkansas Department of Finance & Administration, Miscellaneous Tax Section, P.O. Box 896, Room 230, Little Rock, AR 72203.	Arkansas Soybean Promotion Board, P.O. Box 31, Little Rock, AR 72203.
Delaware Soybean Board, 2320 S. Du Pont Hwy., Dover, DE 19901.	Delaware Soybean Board, 2320 S. Du Pont Hwy., Dover, DE 19901.	Delaware Soybean Board, 2320 S. Du Pont Hwy., Dover, DE 19901.
Florida Soybean Advisory Council, c/o Florida Department of Agriculture, Mayo Building, Tallahassee, FL 32304–0800.	Florida Soybean Advisory Council, c/o Florida Department of Agriculture & Consumer Services, Mayo Building, Tallahassee, FL 32399–0800.	Florida Soybean Advisory Council, c/o Florida Department of Agriculture, Mayo Building, Tallahassee, FL 32304–0800.
Georgia Agriculture Commodity Commission for Soybeans, 3281 Agriculture Building, Capital Square, Atlanta, GA 30334.	Georgia Agriculture Commodity Commission for Soybeans, 3281 Agriculture Building, Capital Square, Atlanta, GA 30334.	Georgia Agriculture Commodity Commission for Soybeans, 3281 Agriculture Building, Capital Square, Atlanta, GA 30334.
Illinois Soybean Program Operating Board, 2422 E. Washington St., Bloomington, IL 61704.	Illinois Soybean Program Operating Board, c/o Magna Bank of Central Illinois N.A., P.O. Box 1247, Bloomington, IL 61701.	Illinois Soybean Program Operating Board, 2422 E. Washington St., Bloomington, IL 61704.
Indiana Soybean Development Council, Inc., 1605 Indianapolis Avenue, P.O. Box 545, Lebanon, IN 46052.	Indiana Soybean Development Council, Inc., P.O. Box 28, Lebanon, IN 46052.	Indiana Soybean Development Council, Inc., 1605 Indianapolis Avenue, P.O. Box 545, Lebanon, IN 46052.
Iowa Soybean Promotion Board, 1025 Ashworth Road, Suite 310, West Des Moines, IA 50265.	Iowa Soybean Promotion Board, P.O. Box 5228, Des Moines, IA 50306.	Iowa Soybean Promotion Board, 1025 Ashworth Road, Suite 310, West Des Moines, IA 50265.
Kansas Soybean Commission, 109 SW 9th St., Topeka, KS 66612–1215.	Kansas Soybean Commission, c/o Kansas State Board of Agriculture, 901 South Kansas Avenue, Topeka KS 66612.	Kansas Soybean Commission, 109 SW 9th St., Topeka, KS 66612–1215.
Kentucky Soybean Promotion Board, 3999 Fort Campbell Blvd., P.O. Box 526, Hopkinsville, KY 42241.	Kentucky Soybean Promotion Board, P.O. Box 534, Hopkinsville, KY 42241.	Kentucky Soybean Promotion Board, 3999 Fort Campbell Blvd., P.O. Box 526, Hopkinsville, KY 42241.
Louisiana Soybean Promotion Board, c/o Louisiana Farm Bureau, P.O. Box 95004, Baton Rouge, LA 70895–9004.	Louisiana Soybean Promotion Board, c/o Louisiana Department of Agriculture & Forestry Revenue Department, P.O. Box 94002, Baton Rouge, LA 70821.	Louisiana Soybean Promotion Board, c/o Louisiana Farm Bureau, P.O. Box 95004, Baton Rouge, LA 70895–9004.
Maryland Soybean Board, 104–A N. Division St., Salisbury, MD 21801.	Maryland Soybean Board, P.O. Box 319, Salisbury, MD 21803.	Maryland Soybean Board, 104–A N. Division St., Salisbury, MD 21801.
Soybean Promotion Committee of Michigan, P.O. Box 287, Frankenmuth, MI 48734.	Soybean Promotion Committee of Michigan, P.O. Box 287, Frankenmuth, MI 48734.	Soybean Promotion Committee of Michigan, P.O. Box 287, Frankenmuth, MI 48734.

Inquiries and general business	Remit assessments and accompanying reports to	Request refunds from
Minnesota Soybean Research & Promotion Council, 360 Pierce Avenue, Suite 110, North Mankato, MN 56003.	Minnesota Soybean Research & Promotion Council, P.O. Box 3091, Mankato, MN 56002.	Minnesota Soybean Research & Promotion Council, 360 Pierce Avenue, Suite 110, North Mankato, MN 56003.
Mississippi Soybean Promotion Board 727 North Old Canton Rd., Canton, MS 39046.	Mississippi Soybean Promotion Board, c/o Mississippi State Tax Commission, P.O. Box 960, Jackson, MS 39205.	Mississippi Soybean Promotion Board, 727 North Old Canton Rd., Canton, MS 39046.
Missouri Soybean Merchandising Council, c/o Missouri Department of Agriculture, 1616 Missouri Blvd., P.O. Box 630, Jefferson City, MO 65102.	Missouri Soybean Merchandising Council, c/o Missouri Department of Agriculture, Grain Commodity Fund, P.O. Box 630, Jefferson City, MO 65102.	Missouri Soybean Merchandising Council, c/o Missouri Department of Agriculture, 1616 Missouri Blvd., P.O. Box 630, Jefferson City, MO 65102.
Nebraska Soybean Development, Utilization, & Marketing Board, 301 Centennial Mall South, 4th Floor, P.O. Box 95144, Lincoln, NE 68509.	Nebraska Soybean Development, Utilization, & Marketing Board, c/o State of Nebraska Fee, Collection Program, P.O. Box 94668, Lincoln, NE 68509.	Nebraska Soybean Development, Utilization, & Marketing Board, 301 Centennial Mall South, 4th Floor, P.O. Box 95144, Lincoln, NE 68509.
New Jersey Soybean Board, 104-A North Division Street, Salisbury, MD 21801.	New Jersey Soybean Board, P.O. Box 85, Mount Holly, NJ 08060.	New Jersey Soybean Board, 104-A North Division Street, Salisbury, MD 21801.
North Carolina Soybean Producers Association, 211 Six Forks Rd., Suite 102, Raleigh, NC 27609.	North Carolina Soybean Producers Association, c/o North Carolina Department of Agriculture, Administrative Services Division, P.O. Box 27647, Raleigh, NC 27611.	North Carolina Soybean Producers Association, 211 Six Forks Rd., Suite 102, Raleigh, NC 27609.
North Dakota Soybean Council, 1351 Page Drive, Suite 201, Fargo, ND 58103.	North Dakota Soybean Council, 1351 Page Drive, Suite 201, Fargo, ND 58103.	North Dakota Soybean Council, 1351 Page Drive, Suite 201, Fargo, ND 58103.
Ohio Soybean Council Board of Trustees, c/o Ohio Soybean Council, P.O. Box 479, II Nationwide Plaza, Columbus, OH 43216.	Ohio Soybean Council Board of Trustees, c/o Ohio Soybean Council, Department 0967, Columbus, OH 43271-0967.	Ohio Soybean Council Board of Trustees, c/o Ohio Soybean Council, P.O. Box 479, II Nationwide Plaza, Columbus, OH 43216.
Oklahoma Soybean Commission, P.O. Box 2424, Muskogee OK 74402.	Oklahoma Soybean Commission, P.O. Box 2424, Muskogee, OK 74402.	Oklahoma Soybean Commission, P.O. Box 2424, Muskogee, OK 74402.
Pennsylvania Soybean Board, 104-A North Division Street, Salisbury, MD 21801.	Pennsylvania Soybean Board, P.O. Box 319, Salisbury, MD 21803.	Pennsylvania Soybean Board, 104-A North Division Street, Salisbury, MD 21801.
South Carolina Soybean Board, 1000 Assembly St., Dennis Bldg., Suite 536, Columbia, SC 29211.	South Carolina Soybean Board, P.O. Box 11280, Columbia SC 29211.	South Carolina Soybean Board, 1000 Assembly St., Dennis Bldg., Suite 536, Columbia, SC 29211.
South Dakota Soybean Research & Promotion Council, 3101 West 41st St., Suite 2088, P.O. Box 88437, Sioux Falls, SD 57105.	South Dakota Soybean Research & Promotion Council, c/o Unified Checkoff South Dakota Department of Revenue, P.O. Box 5055, Sioux Falls, SD 57117.	South Dakota Soybean Research & Promotion Council, 3101 West 41st St., Suite 2088, P.O. Box 88437, Sioux Falls, SD 57105.
Tennessee Soybean Promotion Board, P.O. Box 696, Jackson, TN 38301.	Tennessee Soybean Promotion Board, P.O. Box 500, Shelbyville, TN 37160.	Tennessee Soybean Promotion Board, P.O. Box 696, Jackson, TN 38301.
Texas Soybean Producers Board, 1501 N. Pierce, Suite 110, Little Rock, AR 72207.	Texas Soybean Producers Board, c/o Texas Soybean Promotion Board, Department 1068, P.O. Box 650290, Dallas, TX 75265-0290.	Texas Soybean Producers Board, 1501 N. Pierce, Suite 110, Little Rock, AR 72207.
Virginia Soybean Board, Virginia Department of Agriculture, P.O. Box 26, Warsaw, VA 22572.	Virginia Soybean Board, c/o Virginia Department of Taxation, P.O. Box 6L, Richmond, VA 23282.	Virginia Soybean Board, Virginia Department of Agriculture, P.O. Box 26, Warsaw, VA 22572.
Wisconsin Soybean Marketing Board Inc., 2976 Triverton Pike, Madison, WI 53711.	Wisconsin Soybean Marketing Board Inc., c/o Wisconsin Grain Marketing Board, P.O. Box 21, White Water, WI 53190.	Wisconsin Soybean Marketing Board, Inc., 2976 Triverton Pike, Madison, WI 53711.
All Other States, United Soybean Board Inc., P.O. Box 410977, Creve Coeur, MO 63141.	All Other States, United Soybean Board Inc., P.O. Box 954591, St. Louis, MO 63195-4591.	All Other States, United Soybean Board Inc., P.O. Box 410977, Creve Coeur, MO 63141.

Done at Washington, DC on October 2, 1991.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 91-24192 Filed 10-7-91; 8:45 am]

BILLING CODE 3410-02-M

Agricultural Research Service

National Arboretum Advisory Council; Meeting

According to the Federal Advisory Committee Act of October 6,1972 (Pub. L. 92-463), the Agricultural Research Service announces the following meeting:

Name: National Arboretum Advisory Council.

Date: October 28-29, 1991.

Time: 8:30 a.m.-4:30 p.m., October 28; 8:30 a.m.-3:00 p.m., October 29.

Place: U.S. National Arboretum, 3501 New York Avenue NE., Washington, DC.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permits.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review progress of the National Arboretum relating to congressional mandate of research and education concerning trees and plant life. The Council submits its recommendations to the Secretary of Agriculture.

Contact Person: Howard J.Brooks, Executive Secretary, National Arboretum Advisory Council, room 234 BG-005 BARC-W, Beltsville, MD 20705. Telephone: AC 301/344-3912.

Done at Beltsville, Maryland, this 1st day of October 1991.

Howard J. Brooks,

Executive Secretary, National Arboretum Advisory Council.

[FR Doc. 91-24197 Filed 10-7-91; 8:45 am]

BILLING CODE 3410-03-M

Forest Service

China Hat—South Loop Transmission and Distribution Line, Deschutes National Forest, Deschutes County, OR

AGENCY: Forest Service, USDA.

ACTION: Cancellation of an environmental impact statement.

SUMMARY: The Deschutes National Forest gave notice that an environmental impact statement (EIS) would be prepared for a proposed transmission and distribution line on Forest Service land. The notice of intent published in the **Federal Register** on July 18, 1991 (56 FR 33014) is hereby rescinded. The Deschutes National Forest will be working with Pacific Power & Light, State, County, and City officials to explore other possible locations for the proposed powerline.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this cancellation to Mollie Chaudet, Bend District Environmental Coordinator,

Bend Ranger District, 1230 NE. Third Street, suite A262; Bend, Oregon 97701: (503) 383–4769.

Dated: September 24, 1991.

Jose Cruz,

Forest Supervisor.

[FR Doc. 91–24158 Filed 10–7–91; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Shipper's Export Declaration Form 7525-V.

Form Number(s): 7525-V.

Agency Approval Number: 0607-0018.

Type of Request: Revision to a currently approved collection.

Burden: 611,578 hours.

Number of Respondents: 130,000.

Avg Hours Per Response: 10 minutes.

Needs and Uses: Shipper's Export Declarations (SED's) are required from exporters for all shipments valued over $2500 from the United States except to Canada. Information on the cargo, its origin and destination, and method and date of export are requested on the SED Forms. Customs officials gather the SED forms from export carriers and transmit them to the Census Bureau. The vertical SED, Form 7525-V, is the standard form used to collect these data. SED's are the basic source of the official U.S. export statistics compiled by the Bureau of the Census. These statistics provide data for the merchandise trade balance, a major economic indicator and component of the Gross National Product.

Affected Public: Individuals or households, Farms, Businesses or other for-profit organizations, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Marshall Mills, 395-7340.

Agency: Bureau of the Census.

Title: Shipper's Export Declaration Form 7525-V-Alternate (Intermodal).

Form Number(s): 7525-V-Alternate (Intermodal).

Agency Approval Number: 0607-0152.

Type of Request: Revision to a currently approved collection.

Burden: 461,366 hours.

Number of Respondents: 130,000.

Avg Hours Per Response: 10 minutes.

Needs and Uses: Shipper's Export Declarations (SED's) are required from exporters for all shipments valued over $2500 from the United States except to Canada. Information on the cargo, its origin and destination, and method and date of export are requested on the SED Forms. Customs officials gather the SED forms from export carriers and transmit them to the Census Bureau. The Census Bureau designed Form 7525-V-Alternate primarily for waterborne shipments to simplify documentation. SED's are the basic source of the official U.S. export statistics compiled by the Bureau of the Census. These statistics provide data for the merchandise trade balance, a major economic indicator and component of the Gross National Product.

Affected Public: Individuals or households, Farms, Businesses or other for-profit organizations, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Marshall Mills, 395-7340.

Agency: Bureau of the Census.

Title: Shipper's Export Declaration For In-Transit-Goods Form 7513.

Form Number(s): 7513.

Agency Approval Number: 0607-0001.

Type of Request: Revision to a currently approved collection.

Burden: 21,589 hours.

Number of Respondents: 10,000.

Avg Hours Per Response: 10 minutes.

Needs and Uses: Shipper's Export Declarations (SED's) are required from exporters for all shipments valued over $2500 from the United States except to Canada. Information on the cargo, its origin and destination, and method and date of export are requested on the SED Forms. Customs officials gather the SED forms from export carriers and transmit them to the Census Bureau. Carriers must file Form 7513 for merchandise shipped in bond by vessel through the United States enroute from one foreign country to another without having been entered as an import (in-transit goods). SED's are the basic source of the official U.S. export statistics compiled by the Bureau of the Census. These statistics provide data for the merchandise trade balance, a major economic indicator and component of the Gross National Product.

Affected Public: Individuals or households, Farms, Businesses or other for-profit organizations, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 1, 1991.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 91-24210 Filed 10-7-91; 8:45 am]

BILLING CODE 3510-07-F

International Trade Administration

Short-Supply Review: Certain Steel Plate

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of short-supply review and request for comments: certain steel plate.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 28,328.4 net tons of certain steel plate for the period December 1991 through March 1992 under Article 8 of the U.S.–EC steel arrangement.

SHORT SUPPLY REVIEW NUMBER: 58.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law 101–221, 103 Stat. 1886 (1989) ("the Act"), and 357.104(b) of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.104(b) ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply request is under review with respect to certain steel plate for use in the manufacture of large diameter pipe ("LDP"). On September 27, 1991, the Secretary received an adequate petition from Berg Steel Pipe Corporation ("Berg") requesting a short-supply allowance under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community and the Government of the

United States of America Concerning Trade in Certain Steel Products, for 28,328.4 net tons of American Petroleum Institute modified X–70 grade steel plate to be delivered to Berg between January 20 and February 29, 1992. Berg requests the following quantities of two different sizes of this steel plate: 18,851 net tons of this plate that is 130.297 inches in width and 0.630 inch in thickness, and 9,477 net tons of this plate 148.923 inches in width and 0.701 inch in thickness. Berg is requesting a short-supply allowance because it believes this product is not available in the United States and its potential foreign suppliers have insufficient regular export licenses available during this period.

Section 4(b)(4)(B)(ii) of the Act and § 357.106(b)(2) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exist: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds that none of these conditions exists with respect to the requested product, and therefore, the Secretary will determine whether this product is in short supply not later than October 25, 1991.

Comments: Interested parties wishing to comment upon this review must send written comments not later than October 15, 1991 to the Secretary of Commerce, Attention: Import Administration, Room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. Interested parties may file replies to any comments submitted. All replies must be filed not later than 5 days after October 15, 1991. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply number.

FOR FURTHER INFORMATION CONTACT: Mark B. Brechtl or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230, (202) 377–1386 or (202) 377–0159.

Dated: October 3, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91–24203 Filed 10–7–91; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

National Marine Fisheries Service; Marine Fisheries Advisory Committee; Meeting That Is Partially Closed to the Public

AGENCY: National Marine Fisheries Service (NMFS), NOAA.

TIME AND DATE: Meeting will convene at 8:30 a.m., October 22, and adjourn at 3:30 p.m., October 23, 1991.

PLACE: The Best Western Corte Madera Inn, 1815 Redwood Highway, Corte Madera, California.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public. As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1982), notice is hereby given of a meeting of the Marine Fisheries Advisory Committee (MAFAC). MAFAC was established by the Secretary of Commerce on February 17, 1971, to advise the Secretary on all living marine resource matters which are the responsibility of the Department of Commerce. This Committee ensures that the living marine resource policies and programs of this Nation are adequate to meet the needs of commercial and recreational fishermen, environmental, state, consumer, academic, and other national interests.

Matters To Be Considered

Portions Open to the Public: October 22, 1991, 8:30 a.m.–5:30 p.m., (1) habitat, (2) marine mammals, (3) endangered species, and (4) fisheries management.

October 23, 1991, 8:30–11:30 a.m., (1) international cooperation, and (2) fisheries statistics.

Portions Closed to the Public: October 23, 1991, 1:15–3:30 p.m., Executive Session.

SUPPLEMENTARY INFORMATION: The Chief Financial Officer and Assistant Secretary for Administration of the Department of Commerce, with concurrence of the General Counsel, formally determined on October 1, 1991, pursuant to section 10(d) of the Federal Advisory Committee Act, that the agenda item to be covered during the Executive Session may be exempt from the provisions of the Act relating to open meetings and public participation therein, because the item will be concerned with matters that are within the purview of 5 U.S.C. 552b(c)(9)(B) as information the premature disclosure of which will be likely to significantly frustrate the implementation of proposed agency action. (A copy of the determination is available for public inspection and duplication in the Central Reference and Records Inspection Facility, room 6628, Department of Commerce.) All other portions of the meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Ann Smith, Executive Secretary, Marine Fisheries Advisory Committee, Policy and Coordination Office, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910. Telephone: (301) 427–2259.

Dated: October 2, 1991.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service, NOAA.

[FR Doc. 91–24198 Filed 10–7–91; 8:45 am]

BILLING CODE 3510–22–M

South Atlantic Fishery Management Council Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council (Council) and its Committees will hold public meetings from October 21–25, 1991, at the Ramada Inn Oceanfront; 1701 S. Virginia Dare Trail; Kill Devil Hills, NC; telephone: (919) 441–2151. In addition, the South Atlantic and Mid-Atlantic Fishery Management Councils will hold a joint public meeting.

Councils

The Council is scheduled to begin developing Amendment 6 to the Snapper-Grouper Fishery Management Plan and regulations on managing deep-water snappers and groupers (including consideration of limited entry). The amendment will include a moratorium on commercial permits; restrictions on fishing gear; and a spawning closure for gag grouper. Marine fishery reserves, dealers permits and permit sanctions also will be addressed.

On October 24 from 8:30 a.m. to 3:30 p.m., the South Atlantic and Mid-Atlantic Councils will meet jointly to discuss current and future planned activities for limited entry in the Mid- and South Atlantic regions. The Councils also will discuss the future of mackerel management and its impacts on the Mid-Atlantic area, as well as summer flounder and sea scallop management. The U.S. Coast Guard will present a vessel safety report to the Councils.

The South Atlantic Council will also hold closed sessions (not open to the public) on October 24, from 3:15 to 4:30 p.m., to consider advisory panel selections, and from 4:30 p.m to 5:30 p.m., for the personnel committee meeting.

Committees

The Red Drum Committee will review the 1991 red drum stock assessment review group report and discuss state regulations and recommendations for management contained in the draft amendment to the Atlantic States Marine Fisheries Commission red drum plan.

The Habitat Committee will meet with the North Carolina habitat advisory panel to discuss habitat policies, procedures and priorities, and the status of the Albermarle-Pamlico Sound Estuary, along with other habitat issues.

The Spiny Lobster Committee will develop recommendations for modifications to permit requirements.

A detailed agenda is available to the public. For more information contact Carrie Knight, Public Information Officer: South Atlantic Fishery Management Council: One Southpark Circle, suite 306; Charleston, SC 29407–4699; telephone: (803) 571–4366.

Dated: October 2, 1991.

Joe Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–24137 Filed 10–7–91; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustments of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in China

October 4, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 11, 1991.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–6828. For information on embargoes and quota re-openings call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased, variously, by application of swing and carryforward. The limits for Categories 219, 300/301 and 613 are being reduced to account for the swing being applied. As a result of the adjustments, the sublimit for Categories 338–S/339–S and the limits for Categories 340 and 435, which are currently filled, will re-open.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 48268, published on November 20, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 4, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 14, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on October 11, 1991, you are directed to amend further the directive dated November 14, 1990 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and People's Republic of China:

Category	Adjusted 12-mo limit [1]
Levels not subject to a group:	
219	902,914 square meters.
239	2,555,294 kilograms.
300/301	2,987,672 kilograms.
335	380,205 dozen.
336	149,158 dozen.
338/339	2,323,873 dozen of which not more than 1,747,918 dozen shall be in Categories 338–S/339–S.[2]
340	830,186 dozen of which not more than 384,345 dozen shall be in Category 340–Z [3].
351	462,587 dozen.
352	1,763,649 dozen.
435	25,037 dozen.
436	15,577 dozen.
438	27,261 dozen.
611	4,756,926 square meters.
613	5,031,990 square meters.
617	15,641,841 square meters.
635	556,952 dozen.
649	801,972 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022.

[3] Category 340–Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–24397 Filed 10–7–91; 8:50 am]

BILLING CODE 3510–DR–M

CONSUMER PRODUCT SAFETY COMMISSION

Civil Penalty Authority Under the Federal Hazardous Substances Act and the Flammable Fabrics Act

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of recently enacted civil penalty legislation.

SUMMARY: The Consumer Product Safety Commission ("Commission") publishes a notice advising the public of its newly enacted civil penalty authority under the Federal Hazardous Substances Act and the Flammable Fabrics Act.

DATES: The civil penalty authority under the FHSA and FFA became effective on November 16, 1990.

FOR FURTHER INFORMATION CONTACT: Alan H. Schoem, Director, Division of Administrative Litigation, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207, (301) 492–6626.

SUPPLEMENTARY INFORMATION: On November 16, 1990, the President signed into law the Consumer Product Safety Improvement Act of 1990 (Improvement Act), Public Law 101–608, 104 Stat. 3110. The Improvement Act amended several provisions of the existing Consumer Product Safety Act (CPSA or Act) and added new provisions to that Act. In addition, the Improvement Act amended section 5 of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1264, by adding a new section 5(c), 15 U.S.C. 1264(c), which gives the Commission the authority to seek civil penalties against any person who knowingly violates section 4 of the FHSA, 15 U.S.C. 1263, the prohibited act section. The Improvement Act also amended section 5 of the Flammable Fabrics Act (FFA), 15 U.S.C. 1194, by adding a new section 5(e), 15 U.S.C. 1194(e), which likewise gives the Commission authority to seek civil penalties against any person who knowingly violates a regulation or standard issued under section 4 of the FFA, 15 U.S.C. 1193.

A violation is committed knowingly where a firm has

> Actual knowledge, or * * * the presumed having of knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations.

15 U.S.C. 1264(c)(5) and 1194(e)(4). The Commission has always had authority under the CPSA to seek civil penalties against firms who commit proscribed prohibited acts under that Act. 15 U.S.C. 2069.

In providing the Commission civil penalty authority under the FHSA and FFA, Congress recognized that "(t)he lack of civil penalties has been a particular problem in enforcing various regulations under the FHSA * * * (and has) restricted the CPSC's enforcement options." H.R. Rep. No. 567, 101st Cong., 2d Sess. 21 (1990); See also S. Rep. No. 37, 101st Cong., 1st Sess. 11–12 (1989).

Under both section 5(c) of the FHSA and section 5(e) of the FFA, as well as the CPSA, the Commission may seek a civil penalty not to exceed $5,000 per product involved up to a maximum penalty of $1,250,000 for any related series of violations.

The Commission urges firms to take steps to assure that products they manufacture, import, distribute, offer for sale, and sell comply with the requirements of the CPSA, FHSA and FFA. These steps could include, for example, testing programs that would assure that products conform to the requirements of the standards and regulations issued by the Commission. In providing the Commission civil penalty authority, Congress recognized the need for firms to establish such programs and that such programs could be considered a mitigating factor in determining an appropriate civil penalty for violation of a regulation:

> The Committee believes that it is a fundamental principle that products entering commerce in the United States must comply with applicable safety regulations and is aware that the CPSC has been finding a significant number of violations of regulations promulgated under the FHSA. The CPSC works with affected industries to improve industry quality control programs, and to encourage the establishment of voluntary testing and certification programs. The Committee also believes that it may be appropriate, under certain circumstances, for the CPSC to consider the existence of industry testing programs to detect and correct noncompliance prior to distribution to the public, as a mitigating factor in the assessment or compromise of civil penalties. *An effective and valid industry testing program* to detect noncompliance prior to public distribution could significantly reduce the amount of noncomplying products distributed and the likelihood of injury." (emphasis added).

H.R. Rep. No. 567, 101st Cong., 2d Sess. 21 (1990); See also S. Rep. No. 37, 101st Cong., 1st Sess. 11–12 (1989).

Procedure for Seeking Civil Penalties Under Section 9(c) of the FHSA and 5(e) of the FAA

Where the Commission staff believes a civil penalty may be appropriate, it typically will notify the involved firm and provide it with an opportunity to present argument and facts as to why a civil penalty should not be sought or what mitigating factors it believes should be considered. If the staff and the firm are able to reach agreement on the payment of a civil penalty, the agreement will be transmitted to the Commission for its consideration in accordance with the procedures in 16 CFR 1118.20. If the parties are unable to reach agreement, the Commission staff may request the Commission to ask the Department of Justice to initiate a civil action in federal court on its behalf. See 15 U.S.C. 2076(b)(7).

In determining the amount of civil penalty to seek, the Commission applies the statutory criteria set forth in subsection 5(c)(4) of the FHSA, 15 U.S.C. 1264(c)(4) and subsection 5(e)(3) of the FFA, 15 U.S.C. 1194(e)(3). These criteria, which are similar for both statutes, provides for the Commission to consider (1) the nature and number of violations, (2) the severity of the risk of injury, (3) the occurrence or absence of injury, and (4) the appropriateness of such penalty to the size of the business of the person charged. The Commission may also take into account any other criteria, such as the egregiousness of the violation, it deems appropriate.

EFFECTIVE DATE: Section 5(c) of the FHSA and section 5(e) of the FFA became effective on November 16, 1990.

Dated: October 3, 1991.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 91–24201 Filed 10–7–91; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing

Pursuant to Public Law 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:30 a.m. to 4:30 p.m. on October 17, 1991, and from 8:30 a.m. to 4:30 p.m. on October 18, 1991. The meeting will be held at the Hyatt Regency Crystal City Hotel, 2799 Jefferson Davis Highway, Arlington, VA, 22202. The purpose of the meeting is to review planned changes in the Department of Defense's Student Testing Program and progress in developing paper-and-pencil and computerized enlistment tests. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting

must contact Dr. W. S. Sellman, Director, Accession Policy, Office of the Assistant Secretary of Defense (Force Management and Personnel), room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (703) 695–5525, no later than October 15, 1991.

Dated: October 2, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–24119 Filed 10–7–91; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Lessons Learned During Operation Desert Shield/Desert Storm

ACTION: Change in location of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Lessons Learned During Operation Desert Shield/Desert Storm scheduled for October 16–17, 1991 as published in the **Federal Register** (Vol. 56, No. 155, Page 38126, Monday, August 12, 1991, FR Doc. 91–19071) will be held at McDill AFB, Florida. In all other respects the original notice remains unchanged.

Dated: October 2, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–24118 Filed 10–7–91; 8:45 am]

BILLING CODE 3810–01–M

Department of the Navy

Performance Review Board Membership

Pursuant to 5 U. S. C. 4314(c) (4), the Department of the Navy (DON) announces the appointment of members to the DON's numerous Senior Executive Service (SES) Performance Review Boards (PRBs). The purpose of the PRBs is to provide fair and impartial review of the annual SES performance appraisal prepared by the senior executive's immediate and second level supervisor; to make recommendations to appointing officials regarding acceptance or modification of the performance rating; and to make recommendations for monetary performance awards. In addition, under Public Law 101-194, every three years beginning in 1991, PRBs will review performance of senior executives over the preceding three year period and will make recommendations on recertification of senior executives for continuation in the SES. Composition of the specific PRBs will be determined on an ad hoc basis from among individuals listed below:

Akin, M. G. Mr.
Alexander, C. E. Mr.
Allard, D. C. Dr.
Allen R. C. Radm
Angrist, E. P. Mr.
Anselmo, P. S. Radm
Ashe, O. R. Mr.
Atkins, J. A. Mr.
Baker, E. B. Radm
Baker, A. D. Mr.
Batjer, M. Ms.
Bennitt, B. M. Radm
Bisson, A. E. Dr.
Bizup, J. A. Mr.
Blickstein, R. N. Mr.
Bowles, W. L. Mr.
Brooks, T. A. Radm
Brooke, R. K. Mr.
Buckley, T. Mr.
Calvert, J. Radm
Cammack, E. G. Mr.
Camp, J. R. Mr.
Cann, G. The Honorable
Cassity, J. E. MajGen
Cataldo, P. R. Mr.
Cate, J. P. Mr.
Cherny, J. Mr.
Clare, T. A. Dr.
Coady, P. J. Radm
Coffey, T. Dr.
Coffman, W. R. Mr.
Collie, J. D. Mr.
Comstock, E. T. Mr.
Cook, E. T. LtGen
Cook, W. J. Mr.
Cossey, J. D. Radm
Czelusniak, D. P. Mr.
Dantone, J. J. Radm
Davis, J. R. Dr.
Decorpo, J. J. Dr.
Deprete, A. Mr.
Desalme, J. W. Mr.
Dillon, B. L. Mr.
Dilworth, G. Mr.
Ditrapani, A. R. Mr.
Dixson, H. L. Mr.
Douglass, T. E. Mr.
Drew, M. B. Ms.
Estes, G. B. Radm
Evans, T. W. Radm
Everett, D. Mr.
Faurot, P. R. Mr.
Fisher, P. D. Mr.
Ford, F. B. Mr.
Forssell, A. G. Mr.
Gaffney, P. G. Capt
Gardner, D. R. MajGen
Gay, B. H. Ms.
Geiger, C. G. Mr.
Goodman, R. O. Mr.
Greene, J. B. Radm
Goldschmidt, J. X. Mr.
Grossman, J. C. Mr.
Guenther, J. J. Mr.
Guertin, J. R. Dr.
Guilbault, R. G. Radm
Haas, R. L. Mr.
Hallex, R. A. Mr.
Hamilton, F. X. MajGen
Hancock, W. J. Radm
Harshbarger, E. B. Radm
Hathaway, D. L. Mr.
Hauenstein, W. Radm
Henry, M. G. Mr.
Herd, J. H. Mr.
Hicks, S. N. Mr.
Higgins, M. L. Mr.
Hitch, P. M. Mr.
Jenkins, H. W. MajGen
Johnson, P. J. Mr.
Johnson, R. V. Mr.
Joiner, G. Dr.
Jones, R. G. Radm
Kallmeyer, T. Mr.
Kaskin, J. D. Mr.
Keller , R. B. Mr.
Killkelley, J. L. Mr.
King, C. S. The Honorable
Kinney, E. T. Mr.
Knudsen, R. Dr.
Kobitz, N. Mr.
Kotzen, P. Ms.
Kreitzer, L. P. Mr.
Kuesters, J. P. Mr.
Leach, R. A. Mr.
Leboeuf, G. G. Mr.
Lindahl, W. J. Mr.
Lopata, F. A. Mr.
Lundberg, L. Mr.
Lynch, J. G. Mr.
Manthorpe, W. Mr.
Marsh, J. W. Mr.
Masciarelli, J. R. Mr.
Matteo, D. M. Dr.
Mattheis, W. G. Mr.
McBurnett, G. Ms.
McCauley, D. W. Mr.
McCormack, R. C. The Honorable
McGadney, R. L. Mr.
Meador, L. M. Mr.
Meinig, G. R. Radm
Meletzke, D. M. Ms.
Meserole, M. Mr.
Messere, E. L. Mr.
Metrey, R. E. Mr.
Miller, G. O. Mr.
Miller, W. R. Radm
Milligan, R. D. Radm
Mitchell, J. T. Radm
Montgomery, H. E. Mr.
Morency, D. C. Mr.
Morris, W. R. Radm
Moseley, W. B. Dr.
Murphy, P. M. Mr.
Nemfakos, C. P. Mr.
Nickell, J. R. Mr.
O'Connor, J. J. Mr.
Olsen, M. A. Ms.
Panek, R. L. Mr.
Paulk, R. Ms.
Pennisi, R. A. Mr.
Peters, R. K. Ms.
Phelps, F. A. Mr.
Pope, B. S. The Honorable
Porter, D. E. Mr.
Porter, W. B. Mr.
Powers, B. H. Mr.
Price, R. W. Mr.
Quade, W. A. Mr.
Rath, B. B. Dr.
Rathjen, R. A. Mr.
Reese, H. E. Mr.
Retz, W. A. Mr.
Riggs, R. K. Mr.
Roark, J. E. Mr.
Robenhymer, F. D. Mr.
Robinson, B. B. Dr.
Rojas, R. R. Mr.
Rose, W. B. Mr.
Rossi, D. Mr.
Roth, A. J. Mr.
Saalfeld, F. E. Dr.
Sansone, W. Mr.
Saul, E. L. Mr.
Schafer, J. The Honorable
Schieffer, G. Mr.
Schneider, P. A. Mr.
Schultz, R. E. Mr.
Selwyn, P. A. Dr.
Shaffer, R. L. Mr.
Shearer, R. T. Mr.
Sheridan, F. L. Mr.
Shoup, F. E. Dr.
Silva, E. A. Dr.
Sinsky, J. A. Dr.
Skeen, D. R. Mr.
Smith, N. H. LtGen
Somoroff, A. Dr.
Spalding, G. R. Mr.
Steele, R. H. Mr.
Sterns, F. S. Mr.
Storey, R. C. Mr.
Straw, E. M. Radm
Strohauhl, G. Radm
Taussig, J. K. Mr.
Thomas, R. O. Mr.
Thornett, R. W. Mr.
Tiebout, R. A. MajGen
Tisone, A. A. Mr.
Traister, R. Radm
Turnquist, C. J. Mr.
Urban, R. G. Mr.
Vaughn, R. S. Mr.
Verkoski, J. E. Mr.
Wessel, P. L. Mr.
Whiting, G. A. Capt
Whitman, E. C. Mr.
Wilcox, H. J. Mr.
Willoughby, W. J. Mr.
Wineglass, R. J. MajGen
Winokur, R. S. Mr.
Wisely, H. D. Radm
Witter, R. C. Radm
Wyant, F. E. Mr.
Young, S. D. Ms.
Zangagna, P. E. Mr.
Zimmerman, D. G. Mr.

Dated: September 27, 1991.

Wayne T. Baucino,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 91-24146; Filed 10-7-91; 8:45 am]

BILLING CODE 3810-AE-F

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 91–4]

DOE's Operational Readiness Review Prior to Resumption of Plutonium Operations at the Rocky Flats Plant

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice; recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a concerning DOE's Operational Readiness Review Prior to Resumption of Plutonium Operations at the Rocky Flats Plant. The Board requests public comments on this recommendation.

DATES: Comments, data, views, or arguments concerning this recommendation are due on or before November 7, 1991.

ADDRESSES: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Carole J. Council, at the address above or telephone (202) 208–6400.

Dated: October 3, 1991.

John T. Conway,

Chairman.

[Recommendation 91–4]

By letter dated May 4, 1990, The Defense Nuclear Facilities Safety Board recommended that prior to the resumption of operations at Rocky Flats

a comprehensive Operational Readiness Review (ORR) be carried out by a group of experienced individuals. The Board's Recommendation specified a number of items to be included in the review.

The Secretary of Energy accepted the Board's Recommendation and prepared an Implementation Plan that was later revised and submitted to the Board on February 15, 1991. DOE elected to conduct a separate ORR for each building that the Department proposed to bring back into operation in processing plutonium. The analytical chemistry laboratory, building 559, was chosen to be the first for resumption.

The Implementation Plan stipulated specific objectives that must be achieved for readiness of plant and equipment (hardware), management and personnel, and management programs (procedures, plans, etc.) prior to resumption of plutonium operations in a building. The Implementation Plan also required a number of specific actions to be undertaken including an EG&G program to upgrade the safety of operations, followed by a non-plutonium start-up test program and an EG&G Operational Readiness Review to confirm the adequacy of the upgrades to insure safety of operations at that building.

Although the Implementation Plan recognizes that the sequence for practical reasons may not be fully serial, it was intended that the plutonium start-up tests (functional and preoperational) be completed for vital safety systems equipment before the EG&G Readiness to Proceed Memorandum would be sent to DOE requesting DOE approval to commerce operations, and that subsequently DOE was to conduct its own ORR.

In his August 19, 1991 letter to the President of the Senate, The Secretary reaffirmed that DOE's ORR will be carried out in accordance with the Implementation Plan approved by the DNFSB. The Contractor, DOE, and the Board have each recognized that this first ORR conducted at Rocky Flats will establish an important precedent for future ORR's both at Rocky Flats and other defense nuclear facilities.

The Board has been carefully following EG&G's and DOE's implementation of the ORR process. The Board's staff and expert consultants have observed portions of the ORR while they were being conducted. The Board is satisfied that the DOE established an ORR team with competent independent experts capable of providing confidence that the findings would be technically sound and unbiased.

While the plan recognized that some steps in the DOE ORR might begin before the EG&G Readiness to Proceed Memorandum was issued, an ORR cannot properly be undertaken without progress toward resumption of operations sufficient to establish that the safety objectives have been met or an acceptable plan with reasonable schedules exists for meeting them. The purpose of an ORR for Rocky Flats as stated in the letter from the Secretary accepting Recommendation 90–4, is "to verify the readiness of the Rocky Flats plant to safely resume plutonium operations". If conducted prematurely, an ORR is weakened in accomplishing its purpose. It tends to lose its ability to provide independent confirmation of a state of readiness, subject to planned actions, and becomes instead an adjunct to management in identifying important areas of concern requiring further attention.

The Board finds that the DOE ORR conducted during the period June 28 to July 24 was premature and incomplete, and thus it failed to adhere adequately to the prerequisites established by the Secretary in the Implementation Plan for Recommendation 90–4. DOE conducted the ORR before sufficient progress was made by EG&G toward resumption of plutonium operations to enable performance of an adequate DOE ORR. For example, EG&G's self-assessment of compliance with safety-related DOE orders was in such a preliminary stage that when DOE's team began its ORR it was unable to conduct an evaluation of order compliance.

During the Board's public hearing in Boulder, Colorado on August 24, 1991, DOE reiterated the finding of its ORR report that building 559 is not yet ready for resumption of plutonium operations. We agree with this conclusion. Work previously planned by EG&G had not been completed at the time of DOE's ORR and the completion process was not fully developed. Therefore, the DOE ORR team was unable to complete its review in some areas and was unable to begin such a review in others.

To ensure that its meaning is properly understood, the Board affirms that safety in a complex operation such as that at the Rocky Flats Plant rests on layered safety features that comprise a defense in depth. This permits safety to be achieved even when some safety provisions are imperfectly accomplished. Therefore the Board is not objecting to the ORR on the grounds that inadequacies were found; some could always be present. The Board finds that an adequate Operational Readiness Review, to confirm existence of an adequate level of safety at the planned time of operations, could not be performed at the time of DOE's review. DOE was unable to adequately address specific Board requirements set forth in Recommendation 90–4 and the review itemized safety deficiencies still existing in seven major categories. DOE recognizes that it has not completed an adequate ORR for Building 559, and will have to schedule further action toward this end prior to resumption of plutonium operations in the building.

Its independent observation and the information it had obtained in the course of numerous briefings (two of them public) cause the Board to agree with EG&G and DOE and their experts that the plutonium operations in building 559 can be resumed without risk to persons off site. However, while a number of corrective actions were identified, it still remains to be confirmed that workers on site will be adequately protected.

Since DOE has stated that the ORR of building 559 will set the standard for the following buildings, it is essential that before operations with plutonium are resumed, this first ORR be performed in a manner that properly adheres to the Implementation Plan submitted to the Board. Accordingly, the Board recommends that:

1. A DOE ORR team, including a Senior Advisory Group, using as many as may still be available of the original members, complete the ORR for building 559, but only when (a) DOE has adequate reason to believe that the deficiencies it has identified during its original ORR have been corrected or are appropriately near closure with credible timetables toward closure, and (b) EG&G has issued a Readiness to Proceed Memorandum requesting DOE approval for resumption of plutonium operations in the building, subject to scheduled elimination of the deficiencies.

2. The DOE ORR team continue its review consistent with the requirements of the Recommendation 90–4, and its Implementation Plan. Namely that the review be structured to include, but not be limited to, the following items:

- Independent assessment of the adequacy and correctness of process and utility systems operating procedures. Consistent with the contractor's operating philosophy, these procedures should be in sufficient detail to permit the use of the "procedural compliance" concept.
- Assessment of the level of knowledge achieved during operator requalification as evidenced by review of examination questions and examination results, and by selective

oral examinations of operators by members of the review group.

• Examination of records of tests and calibration of safety systems and other instruments monitoring Limiting Conditions of Operation or that satisfy Operating Safety Requirements.

• Verification that all plant changes including modifications of vital safety systems plutonium processing workstations have been reviewed for potential impact on procedures, training and requalification, and that training and requalification have been done using the revised procedures.

• Examination of each building's Final Safety Analysis Report to ensure that the description of the plant and procedures and the accident analysis are consistent with the plant as affected by safety related modifications made during the outages period.

3. The DOE ORR team include in its final report a description of remaining issues which require closure, if any, and an overall conclusion of readiness for Building 559 to resume operations.

4. EG&G and DOE complete their assessment of compliance with DOE safety orders at Building 559, and their implementation of any compensatory measures that may be needed to achieve the objectives of compliance, as necessary and appropriate for resumption of plutonium operations in Building 559.

John T. Conway,

Chairman.

Appendix—Transmittal Letter to the Secretary of Energy

September 30, 1991.

The Honorable James D. Watkins,
Secretary of Energy, Washington, DC 20585.

Dear Mr. Secretary: On September 30, 1991, the Defense Nuclear Facilities Safety Board, in accordance with 42 U.S.C. § 2286a(5), approved Recommendation 91–4 which is enclosed for your consideration.

42 U.S.C. § 2286d(a) requires the Board, after receipt by you, to promptly make this recommendation available to the public in the Department of Energy's regional public reading rooms. The Board believes the recommendation contains no information which is classified or otherwise restricted. To the extent this recommendation does not include information restricted by DOE under the Atomic Energy Act of 1954, 42 U.S.C. §§ 2161–68, as amended, please arrange to have this recommendation promptly placed on file in your regional public reading rooms.

The Board intends to publish this recommendation in the Federal Register.

The Board will continue to closely follow the progress made by the contractor in correcting safety deficiencies and activities of DOE in conducting and concluding its ORR. Most importantly, the Board will be looking to assure itself that during the ORR process, and subsequently, there has been sufficient closure of safety deficiencies to "ensure adequate protection of the public health and safety" at the time of restart.

Sincerely,

John T. Conway,

Chairman.

Enclosure

[FR Doc. 91–24208 Filed 10–7–91; 8:45 am]

BILLING CODE 6820–KD–M

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meetings

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notices are provided:

I. A meeting of the Industry Supply Advisory Group (ISAG) to the International Energy Agency (IEA) will be held on Monday, October 14, 1991, at the offices of the Organization for Economic Cooperation and Development (OECD), 2 rue Andre-Pascal, Paris, France, beginning at 1 p.m. The purpose of this meeting is to permit attendance by representatives of U.S. company members of the ISAG at a working group to review computer software to be used by ISAG. The agenda for the meeting is as follows:

1. Review of computer software.
2. Next meeting.

II. A meeting of the Industry Advisory Board (IAB) to the IEA will be held on Tuesday, October 15, 1991, at the offices of the OECD at the above address beginning at 10:30 a.m. The purpose of this meeting is to allow representatives of U.S. company members of the IAB to participate in a working group of the IEA's Standing Group on Emergency Questions (SEQ), which is considering the reporting instructions for the IEA's Questionnaire A (QuA) and Questionnaire B (QuB). The agenda for the meeting, which is under the control of the IEA Secretariat, is as follows:

1. Approval of the Summary Record of the 3rd meeting.
2. Report on data quality of the reporting system following its use during the Persian Gulf crisis.
3. Draft QuA reporting instructions.
4. Stock reporting.
5. Trade origins and destinations.
6. Any other business.
7. Date of next meeting.

III. A meeting of the IAB will be held on Wednesday, October 16, 1991, at the OECD at the above address beginning at 10:30 a.m. The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB at an informal consultation meeting of representatives of IEA member countries, which is scheduled to be held at the aforesaid location on that date. The agenda for the meeting is under the control of the SEQ. It is expected that the following draft agenda will be followed:

U.S. Proposals on IEA Emergency Mechanisms

IV. A meeting of the IAB will be held on Thursday, October 17, 1991, at the OECD at the above address, beginning at 9:30 a.m. The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's SEQ which is scheduled to be held at the aforesaid location on that date. The agenda for the meeting is under the control of the SEQ. It is expected that the following draft agenda will be followed:

1. Adoption of the Agenda.
2. Summary Record of the 72nd Meeting.
3. Consultation meeting on U.S. proposals concerning IEA emergency mechanisms.
4. IAB Activities including report on IAB meeting of 26th September in Calgary, Alberta, Canada.
5. The Gulf Crisis of 1990/91, the IEA response and lessons for IEA emergency preparedness; proposed amendments to IEA/SEQ(91)16.
6. Draft Program of Work for 1992.
7. Emergency Response Reviews of IEA Countries:

—Review of Spain
—Schedule for the Review of Member Countries' Emergency Response Programs.

8. Initial preparations for the Seventh Allocation Systems Test.
9. Emergency reserve and net import situation of IEA countries on 1st April and 1st July 1991.
10. Emergency data system and related questions:

—Quarterly Oil Forecast 3Q91/2Q92
—Monthly Oil Statistics (MOS) to June 1991
—MOS to July 1991
—Base Period Final Consumption 2Q90/1Q91 and 3Q90/2Q91
—QuA/QuB Data Quality
—Proposals for the simplification and improvement of Questionnaire C
—Information on oil refineries in IEA countries.

11. Any Other Business:

—IEA membership of Finland and France

—Standing Group on Oil Market meeting of 24th—25th October; current oil market situation.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, these meetings are open only to representatives of members of the ISAG and the IAB, their counsel, representatives of the Departments of Energy, Justice, State, the Federal Trade Commission, and the General Accounting Office, representatives of Committees of the Congress, representatives of the IEA, representatives of members of the SEQ, representatives of the Commission of the European Communities, and invitees of the ISAG, the IAB, or the IEA.

As permitted by 10 CFR 209.32, the usual 7-day period for publication of the notice of these meetings in the **Federal Register** has been shortened because unanticipated circumstances pertaining to the scheduling of these meetings delayed the issuance of this notice.

Issued in Washington, DC, October 1, 1991.

John J. Easton, Jr.,

Acting General Counsel.

[FR Doc. 91-24207 Filed 10-7-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 539-000]

Kentucky Utilities Co.; Availability of Environmental Assessment

October 1, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the existing Lock No. 7 Project located on the Kentucky river in Mercer County near High Bridge, Kentucky, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the existing project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 91-24133 Filed 10-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-3167-000, et al.]

Trunkline Gas Co., et al.; Natural Gas Certificate Filings

September 30, 1991.

Take notice that the following filings have been made with the Commission:

1. Trunkline Gas Co.

[Docket No. CP91-3167-000]

Take notice that on September 20, 1991, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP91-3167-000 pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to reassign volumes of gas sold and delivered to Entex, Inc. (Entex) at the Parchman Penal Farm (Parchman) in Sunflower County, Mississippi and at FM 149 (FM 149) in Harris County, Texas under the blanket certificate issued in Docket No. CP86-586-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Trunkline states that the present volumes delivered to Parchman and to FM 149 are 1,900 Mcf per day and 3,000 Mcf per day, respectively was authorized in Docket No. CP68-187-000. The proposed reassigned volumes to be delivered to Parchman and FM 149 are 2,760 Mcf per day and 2,140 Mcf per day, respectively. The natural gas delivered to these two points is for resale by Entex to customers located within the Parchman Penal Farm of the Mississppi Penitentiary System and near the intersection of FM 149 and Westlock Road in Harris County, Texas.

Comment date: November 14, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. Transcontinental Gas Pipe Line Corp.

[Docket Nos. CP91-3188-000, CP91-3189-000, CP91-3190-000]

Take notice that Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-328-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: November 12, 1991, in accordance with Standard Paragraph G at the end of the notice.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Dth	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-3188-000, (9-23-91)	Ashland Gas Marketing, Inc. (Marketer).	8,133,000 100,000 36,500,000	Various	Various	IT, Interruptible	ST91-10294, 8-1-91
CP91-3189-000, (9-23-91)	Coastal Gas Marketing Company (Marketer).	1,000,000 100,000 36,500,000	Various	Various	IT, Interruptible	ST91-10270, 8-1-91
CP91-3190-000, (9-23-91)	Amerada Hess Corporation (Producer).	1,500,000 500,000 182,500,000	Various	Various	IT, Interruptible	ST91-10267, 8-1-91

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

[1] These prior notice requests are not consolidated.

3. Transcontinental Gas Pipe Line Corp. and United Gas Pipe Line Co.

[Docket Nos. CP91-3208-000, CP91-3209-000, CP91-3210-000]

Take notice that on September 26, 1991, Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251, and United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued in Docket No. CP88-328-000, and docket No. CP88-6-000, respectively, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: November 14, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-3208-000 (9-26-91)	Conoco, Inc. (Producer)	500,000 100,000 [1] 36,500,000	Various	LA, TX	7-21-91, IT, Interruptible.	ST91-10271-000, 8-1-91.
CP91-3209-000 (9-26-91)	Prior Intrastate Corporation (Intrastate Pipeline).	524,000 524,000 191,260,000	Various	Various	5-31-90,[2] ITS, Interruptible.	ST91-10480-000, 8-22-91.
CP91-3210-000 (9-26-91)	Pennzoil Gas Marketing Company (Marketer).	209,600 209,600 76,504,000	Various	Various	12-31-86,[2] Interruptible.	ST91-10499-000, 7-19-91.

[1] Transco's quantities are in dekatherms.
[2] As amended.

4. CNG Transmission Corp.

[Docket No. CP91-3203-000]

Take notice that on September 25, 1991, CNG Transmission Corporation, 445 West Main Street, Clarksburg, West Virginia 26302-2450 (CNG) filed in Docket No. CP91-3203-000 a prior notice request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the natural Gas Act for authorization to transport natural gas on behalf of various CP86-311-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Information applicable to the proposed transportation service, including the identity of the shippers, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: November 14, 1991, in accordance with Standard Paragraph G at the end of this notice.

Shipper name (type)	Peak day, average day, annual dt	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
Goetz Energy Corporation (Marketer)	15,000 82 29,930	PA, NY, WV	NY	7-30-91, TI, Interruptible.	ST91-10134, 8-1-91.
Public Service Electric & Gas (Shipper).	31,936 18,400 6,716,000	PA, NY, WV	PA, NY, OH	5-29-91, TI, Interruptible.	ST91-10136, 8-1-91.
Warren Consolidated Industries, Inc. (End-User).	30,000 25,567 9,331,955	PA, NY, WV	OH	7-17-91, TI, Interruptible.	ST91-9993, 7-17-91.
Oryx Gas Marketing Limited Partnership (Marketer).	100,000 103 37,595	PA, NY, WV	OH	7-2-91, TI, Interruptible.	ST91-10132, 8-14-91.
Oryx Gas Marketing Limited Partnership (Marketer).	100,000 103 37,595	PA, NY, WV	MD	7-2-91, TI, Interruptible.	ST91-10133, 8-14-91.
Oryx Gas Marketing Limited partnership (Marketer).	100,000 103 37,595	PA, NY, WV	NY	7-2-91, TI, Interruptible.	ST91-10135, 8-14-91.
Oryx Gas Marketing Limited Partnership (Marketer).	100,000 103 37,595	PA, NY, WV	PA	7-2-91, TI, Interruptible.	ST91-10131, 8-14-91.

[2] These prior notice requests are not consolidated.

5. Tennessee Gas Pipeline Co., et al.

[Docket Nos. CP91-3205-000, CP91-3206-000, CP91-3207-000]

Take notice that Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252, and Florida Gas Transmission Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued in Docket No. CP87-115-000 and Docket No. CP89-555-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: November 14, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-3205-000	Industrial Energy	[2] 30,000	TX, LA	PA	1-22-88	
ST91-10412 (9-26-91)	Services Company (Marketer).	30,000 10,950,000	OLA, OTX, PA, MS, NY		IT, Interruptible	8-1-91.
CP91-3206-000, (9-26-91)	City Gas Company of Florida.	690 518 251,850	TX, LA, OTX, OLA, MS, AL, FL.	FL	9-1-91, FTS-1, Firm.	ST91-10465, 9-1-91.
CP91-3207-000, (9-26-91)	Gold Bond Building Products.	1,151 863 420,000	TX, LA, OTX, OLA, MS, AL, FL.	FL	9-1-89, PTS-1, Interruptible.	ST91-10432, 9-1-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] Measured in dt equivalent.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-24179 Filed 10-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-7-22-003]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 1, 1991.

Take notice that CNG Transmission Corporation ("CNG") on September 26, 1991, pursuant to section 4 of the Natural Gas Act part 154 and § 2.104 of the Commission's Regulations, the provisions of the Stipulation and Agreement approved by the Commission on October 6, 1989, in Docket No. RP88-217-000, *et. al.*, § 12.9 of the General Terms and Conditions of CNG's FERC Gas Tariff, Order Nos. 528 and 528-A, and the Commission's order issued September 11, 1991, in Docket No. TM91-7-22-001, *et al.* filed the following revised tariff sheet to First Revised Volume No. 1:

Third Substitute First Revised Sheet No. 55

The proposed effective date is July 29, 1991.

CNG states that this filing is in compliance with Commission orders of July 26, 1991 and September 11, 1991, which required CNG to refile to allocate Texas Eastern Transmission Corporation Take-or-Pay amounts to CNG's small customers using the same methodology as Texas Eastern. CNG states that it has used the Texas Eastern methodology to the extent possible and has filed supporting workpapers.

CNG states that copies of the filing were served upon affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before October 8, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-24131 Filed 10-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA91-9-000]

Hawley and Wright, Inc, and Ensign Operating Co.; Petition for Adjustment

October 2, 1991.

Take notice that on September 26, 1991, Hawley and Wright, Inc., and Ensign Operating Company (petitioners) filed with the Federal Energy Regulatory Commission (Commission) a petition for an adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) and part 385 (Subpart K) of the Commission's regulations. Petitioners seek a waiver of the filing deadline requirements of § 271.805 of the Commission's regulations to permit production from the Rooney No. 1 Well, located in Haskell County, Kansas, to qualify as stripper well gas under NGPA section 108 during the following periods:

11/01/83 through 02/28/84, 11/01/84 through 01/31/85, 06/01/85 through 03/31/86, 05/01/86 through 10/31/86, 02/01/87 through 03/31/88, 11/01/88 through 09/30/89, 02/01/90 through 03/31/90. Gas produced from the Rooney No. 1 Well has been sold exclusively to Colorado Interstate Gas Company (CIG) under a gas purchase contract dated August 9, 1955, by the between Northern Pump Company, as seller, and CIG, as buyer.

Any person desiring to be heard or protest this petition should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 23, 1991. All protests filed will be considered, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's rules. Copies of this petition are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-24178 Filed 10-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-1-25-000]

Mississippi River Transmission Corp.; Rate Change Filing

October 1, 1991.

Take notice that on September 27, 1991, Mississippi River Transmission Corporation (MRT) tendered for filing Sixty-Sixth Revised Sheet No. 4, and Twenty-Fifth Sheet No. 4.1 to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective October 1, 1991. MRT states that the purpose of the instant filing is to reflect an out-of-cycle purchase gas cost adjustment (PGA).

MRT states that Sixty-Sixth Revised Sheet No. 4 and Twenty-Fifth Revised Sheet No. 4.1 reflect an increase of 0.8 cents per MMBtu in the commodity cost of purchased gas from PGA rates filed to be effective September 1, 1991 filing date, MRT TQ91-6-25-001. MRT also states that since the September 1, 1991 filing date, MRT has experienced increases in purchase and transportation costs for its system supply that could not have been reflected in that filing under current Commission regulations.

MRT states that a copy of the filing has been mailed to each of MRT's jurisdictional sales customers and to the State Commissions of Arkansas, Missouri, and Illinois.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 8, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-24134 Filed 10-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-229-000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

October 2, 1991

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on September 30, 1991 tendered for filing revised tariff sheets which reflect an increase in rates. Panhandle requests an effective date of November 1, 1991.

Panhandle states that the rates proposed herein reflect an increase in jurisdictional revenues of approximately $18 million and are predicated upon total projected throughput volumes of approximately 600 million MMBtu.

Panhandle states that in addition to the rate changes, certain changes to the terms and conditions of the various sales and transportation rate schedules are proposed in the filing. Panhandle states that the more significant changes are: (1) Tariff notice to customers of certain of their cost responsibilities in the event the PGA shall cease to be applicable; (2) provisions to establish additional opportunities for pooling on the Panhandle system for service at Tuscola, Illinois; (3) provisions to implement rates for third party use of Panhandle's service rights on Colorado Interstate Gas Company's system; (4) revisions to the basis for transportation rates to reflect volumes delivered (rather than volumes received); and (5) tariff provisions to adjust to base rates, which reflect the current level of Account No. 858 expenses, to reflect changes in costs incurred for the transmission and compression of gas by others.

Panhandle states that copies of the rate filing are being served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-24177 Filed 10-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT91-41-000]

Penn-Jersey Pipe Line Co.; Proposed Changes in FERC Gas Tariff

October 1, 1991.

Take notice that on September 23, 1991, Penn-Jersey Pipe Line Co. ("Penn-Jersey"), Hackett Hill Road, P.O. Box 869, Bradford, Vermont 05033, tendered for filing revised tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff:

Second Revised Sheet No. 4
Second Revised Sheet No. 5

Penn-Jersey states that the tariff sheets are filed to revise the account numbers reflected in Penn-Jersey's Rate Schedule T-1 to conform to the current Uniform System of Accounts for natural gas companies. Penn-Jersey states that the tariff sheet revisions are in form only, have no effect on Penn-Jersey's terms and conditions of service and carry no rate consequences for Penn-Jersey's customer.

Penn-Jersey requests an effective date of January 1, 1994 and seeks waiver of any Commission regulations necessary to effect the proposed changes on that date.

Penn-Jersey states that a copy of Penn-Jersey's filing has been served on its customer and on the New Jersey Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825

North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 8, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–24132 Filed 10–7–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ92–1–18–000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 1, 1991.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on September 30, 1991, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Forty-fourth Revised Sheet No. 10
Forty-fourth Revised Sheet No. 10A
Twenty-fifth Revised Sheet No. 11
Fifteenth Revised Sheet No. 11A
Fifteenth Revised Sheet No. 11B
Alternate Forty-fourth Revised Sheet No. 10
Alternate Forty-fourth Revised Sheet No. 10A
Alternate Twenty-fifth Revised Sheet No. 11
Alternate Fifteenth Revised Sheet No. 11A
Alternate Fifteenth Revised Sheet No. 11B

Texas Gas states that these tariff sheets reflect changes in purchased gas costs pursuant to the Quarterly Rate Adjustment provision of the Purchased Gas Adjustment clause of its FERC Gas Tariff and are proposed to be effective November 1, 1991. Texas Gas further states that the proposed tariff sheets reflect a commodity rate increase of $.4294 per MMBtu, a D–2 demand rate increase of $.0006 per MMBtu, and an SGN Standby rate increase of $.0009 to $.0010 per MMBtu in purchased gas costs from those reflected in the rates set forth in the Quarterly PGA filed June 28, 1991 (Docket No. TQ92–1–18). In addition, the instant filing reflects a $.7076 per MMBtu commodity rate increase, and a $.0006 per MMBtu D–2 demand rate increase from the rates effective October 1, 1991 (Docket No. TF92–1–18). No change in the D–1 demand rate is proposed in the instant filing. In addition, Texas Gas requests waiver of the Commission's PGA regulations to revise its PGA surcharge from $(.0956) per MMBtu to $(.1735) per MMBtu, as reflected on the primary tariff sheets. The alternate sheets reflect the current $(.0956) per MMBtu surcharge.

Texas Gas states that copies of the filing were served on Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 8, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–24135 Filed 10–7–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–141–000]

Williston Basin Interstate Pipeline Co.; Informal Settlement Conference

October 2, 1991.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, October 9, 1991, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations, 18 CFR 385.214.

For additional information, contact William J. Collins at (202) 208–0248 or Russell B. Mamone at (202) 208–0744.

Lois D. Cashell,

Secretary.

[FR Doc. 91–24176 Filed 10–7–91; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

Coal Policy Committee, National Coal Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Coal Policy Committee of the National Coal Council (NCC).

Date and Time: Wednesday, October 23, 1991, 9:30 a.m.

Place: Madison Hotel, 15th & M Streets, NW, Washington, DC

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, DC 20585, Telephone: 202/586–3867.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Purpose of the Meeting: To discuss progress on current studies, new study topics, and structure procedures of the Council.

TENTATIVE AGENDA

—Call to order by William Wahl, Chairman of the Coal Policy Committee
—Adoption of the formal agenda by Chairman Wahl
—Remarks by Chairman Wahl
—Remarks by Department of Energy representative
—Review of the status of the two current NCC studies
—General discussion of topics for new NCC studies
—General discussion on structure and procedures of the NCC
—Any other business to be properly brought before the Committee
—Public comment—10 minute rule
—Adjournment

Public Participation: The meeting is open to the public. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to the agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcript: Available for public review and copying at the Public Reading Room, room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on October 3, 1991.

Marcia Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 91-24206 Filed 10-7-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of August 19 through August 23, 1991

During the week of August 19 through August 23, 1991, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Harold H. Johnson, 8/22/91, LFA-0139

Harold H. Johnson filed an Appeal from a determination issued by the Bonneville Power Administration (BPA). In that determination BPA denied, in part, Mr. Johnson's request for information made under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the information which Mr. Johnson requested should be withheld on the basis of FOIA Exemptions 5 and 6. Further, although not indicated in BPA's determination, a portion of the information Mr. Johnson was requesting did not exist. Therefore, the Appeal was denied.

Unisys, 8/20/91, LFA-0135

On July 25, 1991, Unisys filed an Appeal from a determination issued to it on June 6, 1991 by the Assistant Administrator for Management of the Western Area Power Administration of the Department of Energy (DOE). In that determination, the Assistant Administrator denied a request for information filed pursuant to the Freedom of Information Act. Specifically, the Assistant Administrator denied the Unisys request for a copy of award fee information regarding contract DE-AC65-89WA04360. In considering the Appeal, the DOE confirmed the existence of a document responsive to the Unisys request as clarified by the firm in its Appeal. Accordingly, the DOE remanded the case to the Assistant Administrator for a determination regarding the releasability of this document.

Motion for Discovery

Robert J. Martin, James M. Betz, 8/22/91, LRD-0002, LRD-0005, LRH-0001

Robert J. Martin (Martin) filed a Motion for Discovery and Motion for Evidentiary Hearing, and James M. Betz (Betz) filed a Motion for Discovery, relating to a Proposed Remedial Order (PRO) issued by the Economic Regulatory Administration (ERA) on January 31, 1990, jointly to Martin, Betz d/b/a/ Betz Oil and Trading Company, Gordon S. Gregson, Kenneth H.N. Taves and K.T. Trading Corp. In the PRO, the ERA alleges that during January through December 1980, the PRO recipients participated in certain illicit transactions to defraud the DOE Entitlements Program, 10 CFR 211.66, 211.67, resulting in the circumvention or contravention of DOE regulations, in violation of 10 CFR 205.202 and 210.62(c). In considering Betz' Motion for Discovery, the DOE determined that the information sought in Betz' nine-part request for production of documents was legal in nature, irrelevant or unnecessary. However, in considering Martin's Motion for Discovery, the DOE determined that a material, disputed factual issue existed regarding Martin's involvement in the transactions challenged in the PRO, but that Martin failed to otherwise support his discovery requests for production of documents, interrogatories and depositions. Similarly, in considering Martin's Motion for Evidentiary Hearing, the DOE determined that an evidentiary hearing was appropriate in order to more fully examine the matter of Martin's involvement in the transactions concerned. Accordingly, Betz' Motion for Discovery was denied, and both Martin's Motion for Discovery and Motion for Evidentiary Hearing were granted in part.

Supplemental Order

Port Petroleum, Inc., 8/23/91, LRX-0001

In Case No. KRO-0920, Port Petroleum, Inc. (Port) objected to a Proposed Remedial Order (PRO) that the DOE's Economic Regulatory Administration (ERA) issued on April 7, 1986. In the PRO, the ERA sought the repayment of over $9 million in alleged unwarranted entitlements benefits. After considering objections for three sample months, the DOE determined that the PRO proceeding should be bifuracted. The DOE issued a Remedial Order for the three sample months, designated as Case No. LRX-0001. In the Remedial Order, the DOE found, inter alia, that the firm's attempts to detach price-controlled certifications from crude oil located in its tank were ineffective. As a result, the DOE fond that the firm underreported its receipts of price-controlled crude oil and received $1.3 million in unwarranted entitlements benefits. The DOE ordered the refund of this amount and set a date for the filing of objections with respect to the remaining months of the audit period, which continues to be the subject of KRO-0290.

Implementation of Special Refund Procedures

Apex Oil Co., Apex Holding Co., Clark Oil & Refining Corp., Goldstein Oil Co., Novelly Oil Co., 8/20/91, LEF-0003

The DOE issued a Decision and Order implementing special refund procedures to distribute $15,000,000 and accrued interest, remitted to the DOE by AOC Acquisition Corp. (AOC) pursuant to a settlement between the DOE and AOC. The agreement settled DOE allegations that AOC's predecessor companies, Apex Oil Co. (Apex), Apex Holding Co., Clark Oil & Refining Corp. (Clark), Goldstein Oil Co., and Novelly Oil Co. violated price and allocation regulations. Because the allegations of crude oil violations against Apex had been fully adjudicated prior to the settlement agreement, the DOE determined that it would direct $3,620,649, and accrued interest, into a crude oil refund pool. The DOE determined that the remaining $11,379,351, and accrued interest, will be used to provide restitution based on Clark's alleged violations in its sales of refined products. The crude oil pool will be disbursed to the federal government, the states, and eligible applicants in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases. The Doe determined that it will distribute the refined product pool in two stages. In the first stage, the DOE will accept claims from identifiable purchasers of petroleum products from Clark who may have been injured by the alleged overcharges. If any funds remain after meritorious claims are paid in the first stage, they will be used for indirect restitution through the States in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986.

Diamond Shamrock R&M, Inc., 8/21/91, LEF-0030

The DOE issued a Decision and Order implementing special refund procedures to distribute $17,201,703.68, and accrued interest, remitted to the DOE by Diamond Shamrock R&M, Inc., in settlement of its alleged crude oil violations of petroleum price and

allocation regulations. The DOE determined that the monies would be added to the crude oil refund pool to be disbursed to the federal government, the states, and eligible claimants in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases. Philip Kalodner had filed comments suggesting that the DOE either enlarge the allocation of funds for claimants or lower the volumetric refund amount for claims submitted to OHA after June 30, 1988 so as to ensure the receipt of what he contended was a proper refund amount for his clients. The DOE did not except Mr. Kalodner's suggestions.

Refund Applications

Exxon Corporation/Eastern Seaboard Petroleum Company, 8/22/91, RF307–9360

The DOE issued a Decision and Order granting Steuart Petroleum Company a refund of $14,247 based on purchases of Exxon Corporation middle distillates made by Eastern Seaboard Petroleum Company. However, the DOE denied Steuart a refund for Eastern's purchases of 552,585,768 gallons of residual fuel since there was evidence in the record that these purchases were likely to have been imported and Steuart failed to submit evidence to rebut the presumption that these purchases were the "first sale into U.S. commerce," and were thus exempt from Federal price controls. Since no Exxon overcharges could be attributed to these purchases, the applicant was found not eligible for a refund for them.

Thomas P. Reidy, Inc./ Tesoro Petroleum, Distributing Company, 8/22/91, RF322–4

The DOE issued a Decision and Order concerning an Application for Refund filed by Tesoro Petroleum Distributing Company (Tesoro), a refiner and refined products reseller with headquarters in San Antonio, TX. Tesoro sought a portion of the settlement fund obtained by the DOE as a result of a consent order entered into by Thomas P. Reidy, Inc. Tesoro chose not to provide a detailed demonstration of injury in support of its refund claim and instead accepted the mid-level presumption of injury. Under this presumption, Tesoro could receive a refund equal to $10,000 or 40 percent of its allocable share, without proving it was injured by Reidy's alleged overcharges. The DOE determined that Tesoro should receive a refund of $42,470 ($35,620 principal plus $6,850 interest).

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Co./Consolidated Edison Company of New York, Inc.	RF304–3869	08/20/91
Atlantic Richfield Co./Ernest C. Betcher *et al*	RF304–3010	08/21/91
Atlantic Richfield Co./Harman's ARCO *et al*	RF304–7247	08/21/91
Atlantic Richfield Co./Michigan-Elmer Service *et al*	RF304–3431	08/23/91
Atlantic Richfield Co./PEMCO Supply Co., Inc.	RF304–8181	08/20/91
PEMCO Supply Co. of New York, Inc.	RF304–8182	
Seddon Lathrop Oil Corporation	RF304–8183	
Meehan Company	RF304–8184	
Atlantic Richfield Co./Time Oil Company *et al*	RF304–12219	08/20/91
Atlantic Richfield Co./Williams' ARCO Servicenter *et al*	RF304–4186	08/23/91
Citronelle-Mobile Gathering/Holy Name Hospital	RF336–22	08/20/91
Empire Gas Corporation/Betty A. Warman	RF335–34	08/21/91
Bull Moose Tube Co.	RF335–35	
Rural Parish Workers of Christthe King	RF335–37	
Exxon Corporation/Powell C. McCall	RF307–10189	08/21/91
Louisville Gas & Electric *et al*	RF272–60132	08/22/91
Reliable Contracting Co., Inc.	RD272–61324	
Kestrel (Australia) Pty., Ltd.	RD272–62588	
Shell Oil Company/Jameson & Volkmar, Inc. *et al*	RF315–950	08/23/91
Texaco Inc./American Trading & Production *et al*	RF321–9900	08/21/91
Texaco Inc./College Center Texaco Service	RF321–9839	08/22/91
Dave Hollick College Centertexaco	RF321–16348	
Texaco Inc./Haileyville Texaco *et al*	RF321–332	08/19/91
Texaco Inc./Hargraves Texaco *et al*	RF321–8207	08/22/91
Texaco Inc./Town of Arcade Highway Dept. *et al*	RF321–9516	08/23/91

Dismissals

The following submissions were dismissed:

Name	Case No.
Abbe's Texaco	RF321–724
Allen's Arco	RF304–10293
Andeson Auto Service & U-Haul	RF304–12035
Arnone Texaco	RF321–4962
Art's Texaco	RF321–4935
Ballejo Gulf	RF300–11846
Beasley Spur	RF309–1417
Brownie's Texaco	RF321–4950
Charlie Russell Texaco	RF321–4945
Chico Unified School Dist.	RF272–78980
Clarkrange Market Gulf	RF300–12911
College Greens Texaco	RF321–16350
Crookston School District	RF272–78878
Del's Texaco	RF321–11818
Diaz Texaco	RF321–7890
Dwire Bros. Garage & Service	RF300–14603
Energy Texaco	RF321–4956
Farm Bureau Driveway	RF300–16084
Frank's Texaco	RF321–49381
Gustafson's Texaco	RF321–4507
Hancock's Arco	RF304–9881
Hidro Gas Juarez, S.A.	RF304–4287
Hisle's Texaco	RF321–10771
Holdingford School District	RF272–78769
Isaman & Son, Inc.	RF315–9550
Jesse Baker's Arco	RF304–11920
Johnny's Arco	RF304–12098
Klaus Texaco	RF321–4958
Lane's Texaco	RF321–4942
Lee's Texaco	RF321–4944
LeHarve Owner's Corporation	RF272–61040
Lexington City Elementary School District.	RF272–78748
M.C. Beck Distributor, Inc.	RF321–2668
Marion-Adams Schools	RF272–78882
Massac Unit Dist. #1	RF272–78891
Maxwell's Texaco	RF321–4933
North Parkway Texaco	RF321–425
Northcrest Arco	RF304–12078
Oak Park Texaco	RF321–434
Patel Texaco	RF321–6058
Pyramid Supply, Inc.	RF309–1419
Riverside School District	RF272–78774
Ron's Texaco	RF321–4947
Schiro's Texaco	RF321–4931
South Street Texaco	RF321–520

Name	Case No.
Stan's Texaco	RF321-4939
Vincent E. Doyle	RF304-2477
Voss Oil, Inc.	RF321-1879
Waterman CU School Dist. 431	RF272-78958
Wayne's Texaco	RF321-4936
Wyatt's Texaco	RF321-1973
Zatopek Texaco	RF321-1308

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the Hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: October 1, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91-24204 Filed 10-7-91; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the proposed procedures to be followed in refunding to adversely affected parties $83,750,000 in crude oil overcharge funds plus accrued interest, that Salomon Inc is required to remit to the DOE pursuant to a Consent Order finalized on November 13, 1990. The funds will be distributed in accordance with the DOE's special refund procedures, 10 CFR part 205, subpart V.

DATE AND ADDRESS: Comments must be filed in duplicate by November 7, 1991 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a conspicuous reference to Case Number LEF-0033.

FOR FURTHER INFORMATION CONTACT: Richard T. Tedrow, Deputy Director, William Robinson, Staff Analyst, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8018 (Tedrow); (202) 586-6602 (Robinson).

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth the procedures that the DOE has tentatively formulated to distribute monies that have been remitted by Salomon Inc to the DOE to settle alleged pricing and allocation violations with respect to the firm's resale transactions of crude oil. The DOE is currently holding Salomon Inc's full payment of $83,750,000 in an interest-bearing escrow account pending distribution.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice.

All comments received will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except Federal holidays in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: October 1, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

October 1, 1991.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Salomon Inc.
Date of Filing: May 24, 1991.
Case Number: LEF-0033.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

This Decision and Order considers a Petition for the Implementation of Special Refund Procedures filed by the ERA for crude oil overcharge funds. The petition deals with monies obtained from Salomon Inc, Case No. LEF-0033. Salomon remitted $83,750,000.00 to the DOE pursuant to a proposed Consent Order entered into by Salomon and the DOE on September 12, 1990 and finalized on November 13, 1990. This Consent Order resolved allegations that Salomon committed violations of the federal petroleum price and allocation regulations during the period January 1, 1978 through January 28, 1981 (Consent Order number 6C0X00249A). This Proposed Decision and Order sets forth the OHA's tentative plan to distribute these funds. Comments are solicited.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR part 205, subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of subpart V and the authority of the OHA to fashion procedures to distribute refunds, see Office of Enforcement, 9 DOE ¶ 82,508 (1981) and Office of Enforcement, 8 DOE ¶ 82,597 (1981). We have considered the ERA's requests to implement Subpart V procedures with respect to the monies received from Salomon and have determined that such procedures are appropriate.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 Fed. Reg. 27899 (August 4, 1986) (hereinafter the MSRP). The MSRP, issued as a result of a court-approved Settlement Agreement in In re: The Department of Energy Stripper Well Exemption Litigation, M.D.L. No. 378 (D. Kan. 1986), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to twenty percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

The OHA has been applying the MSRP to all Subpart V proceedings involving alleged crude oil violations. See Order Implementing the MSRP, 51 FR 29689 (August 20, 1986) (hereinafter the August 1986 Order). That Order provided a period of thirty days for the filing of any objections to the application of the MSRP and solicited comments concerning the appropriate procedures to follow in processing

refund applications in crude oil refund proceedings.

On April 10, 1987, the OHA issued a Notice analyzing the numerous comments which it received in response to the August 1986 Order. 52 Fed. Reg. 11737 (April 10, 1987) (hereinafter the April 10 Notice). The April 10 Notice set forth generalized procedures and provided guidance to assist claimants that wish to file refund applications for crude oil monies under the Subpart V regulations. In that Notice, the OHA stated that all applicants for crude oil refunds would be required to document their purchase volumes of petroleum products during the period of Federal crude oil price controls and to prove that they were injured by the alleged overcharges. The April 10 Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have absorbed the crude oil overcharges and need not submit any further proof of injury to receive a refund. Finally, the OHA stated that refunds would be calculated on the basis of a per-gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would consist of the crude oil overcharge monies that were in the DOE's escrow account at the time of the settlement, or were subsequently deposited in the escrow account, and a portion of the funds in the M.D.L. 378 escrow at the time of the settlement.

These procedures, which the OHA has applied in numerous cases since the April 10 Notice, see, e.g., New York Petroleum, Inc., 18 DOE ¶ 85,435 (1988); Shell Oil Co., 17 DOE ¶ 85,204 (1988); *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 (1988), have been approved by the United States District Court for the District of Kansas as well as the Temporary Emergency Court of Appeals. Various states had filed a Motion with the Kansas District Court, claiming that the OHA violated the Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. On August 17, 1987, the Court issued an Opinion and Order denying the states' Motion in its entirety. In re: The Department of Energy Stripper Well Exemption Litigation, 671 F Supp. 1318 (D. Kan. 1987). The Court concluded that the Settlement Agreement "does not bar OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *Id.* at 1323. The court also ruled that, as specified in the April 10 Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *Id.* at 1323–24. The states appealed the latter ruling, but the Temporary Emergency Court of Appeals affirmed the Kansas District Court's decision. In re: The Department of Energy Stripper Well Exemption Litigation, 857 F.2d 1481 (T.E.C.A. 1988).

II. The Proposed Refund Procedures

A. Refund Claims

We now propose to apply the procedures in the April 10, 1987 Notice to the crude oil monies that are the subject of the present determination. As noted above, $83,750,000 in alleged crude oil violation amounts is covered by this Proposed Decision. We have decided to reserve initially the full 20 percent of the alleged crude oil violation amounts, of $16,750,000 in principal, plus accrued interest for direct refunds to claimants, in order to ensure that sufficient funds will be available for refunds to injured parties. The amount of the reserve may be adjusted downward later if circumstances warrant such action.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. See MAPCO, Inc., 15 DOE ¶ 85,097 (1986); Mountain Fuel Supply Co., 14 DOE ¶ 85,475 (1986). As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Following Subpart V precedent, reasonable estimates of purchase volumes may be submitted. Greater Richmond Transit Co., 15 DOE ¶ 85,028, at 88,050 (1986). Generally, it is not necessary for applicants to identify their suppliers of petroleum products in order to receive a refund.

Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond volumes of product purchased during the period of crude oil price controls. See A. Tarricone Inc., 15 DOE ¶ 85,495, at 88,893–96 (1987). The end-user presumption of injury is rebuttable, however. Berry Holding Co., 16 DOE ¶ 85,405, at 88,797 (1987). If an interested party submits evidence which is of sufficient weight to cast serious doubt on whether the specific end-user in question was injured, the applicant will be required to produce further evidence of injury. See New York Petroleum, 18 DOE at 88,701–03.

Reseller and retailer claimants must submit detailed evidence of injury and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type employed in the Report by the Office of Hearings and Appeals to the United States District Court of the District of Columbia. In re: The Department of Energy Stripper Well Exemption Litigation, 6 Fed. Energy Guidelines ¶ 90,507 (1985). Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Stripper Well Agreement have waived their rights to apply for crude oil refunds under subpart V. Boise Cascade Corp., 16 DOE ¶ 85,214, at 88,411, reconsideration denied, 16 DOE ¶ 85,494, *aff'd sub nom. In re: The Department of Energy Stripper Well Exemption Litigation, 3 Fed. Energy Guidelines ¶ 26,613 (D. Kan. 1987).*

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the alleged crude oil violation amount involved in this determination ($83,750,000) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). Mountain Fuel, 14 DOE at 88,868 n.4. This yields a volumetric refund amount of $0.00004143993 per gallon for the proceeding involved in this determination. The use of this approach reflects the fact that crude oil overcharges were spread equally throughout the country by the Entitlements Program.[1]

As we have stated in previous Decisions, a crude oil refund applicant is required to submit only one application for crude oil overcharge funds. See Allerkamp, 17 DOE at 88,176. Any party that has previously submitted a refund application in the crude oil refund

[1] The DOE established the Entitlements Program to equalize access to the benefits of crude oil price controls among all domestic refiners and their downstream customers. To accomplish this goal, refiners were required to make transfer payments among themselves through the purchase and sale of "entitlements." This balancing mechanism had the effect of evenly disbursing overcharges resulting from crude oil miscertifications throughout the domestic refining industry. See Amber Refining Inc., 13 DOE ¶ 85,217 at 88,564 (1985).

proceedings need not file another application; that application will be deemed to be filed in all crude oil proceedings finalized to date. The deadline for filing an Application for Refund for crude oil implementation orders issued since January 18, 1991 is June 30, 1992. See Quintana Energy Corporation, 21 DOE ¶ 85,327 (January 18, 1991). It is the policy of the DOE to pay all crude oil refund claims filed before June 30, 1992 at the rate of $.0008 per gallon. However, while we anticipate that applicants which filed their claims by June 30, 1988 will receive a supplemental refund payment, we will decide in the future whether claimants that filed later Applications should receive additional refunds. Applicants may be required to submit additional information to document their refund claims for these future amounts. Notice of any additional amounts available in the future will be published in the **Federal Register.**

B. Payments to the States and Federal Government

Under the terms of the MSRP, the remaining eighty percent of the alleged crude oil violation amount subject to this Decision or $67,000,000 in principal, plus accrued interest, should be disbursed in equal shares to the states and federal government for indirect restitution. Accordingly, we will direct the DOE's Office of the Controller to transfer one-half of that amount, or $33,500,000 into an interest-bearing subaccount for the states and one-half into an interest-bearing subaccount for the federal government. In accordance with previous practice, when the amount available for distribution to the states reaches $10 million, we will direct the DOE's Office of the Controller to make the appropriate disbursements to the individual states. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Salomon Inc. pursuant to the Consent Order finalized on November 13, 1990 will be distributed in accordance with the foregoing Decision.

[FR Doc. 91-24205 Filed 10-7-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 4019-2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATE: Comments must be submitted on or before November 7, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Asbestos School Hazard Abatement Act, Grant and Loan Program Application Form (EPA ICR No.: 0155.04; OMB No.: 2070-0029). This is an extension of the expiration date of a previously approved collection.

Abstract: The Asbestos School Hazard Abatement Reauthorization Act (ASHARA) of 1990 requires the EPA to provide financial assistance to Local Education Agencies (LEAs) so that they may carry out asbestos abatement projects. Under ASHARA, the LEA's applications must contain information describing and assessing the nature and extent of the asbestos problem for which the assistance is sought, and information describing the financial resources of the LEA. Funding for the loan and grant program is appropriated by Congress annually. Under the appropriation EPA is required to solicit ASHARA applications no later than November 15 and to issue awards by April 30 of each year.

Burden Statement: The burden for this collection of information is estimated to average 27 hours per response for reporting, and 4 hours per recordkeeper annually. This estimate includes the time needed to review instructions, gather the data needed, and review the collection of information.

Respondents: Local Education Agencies.

Estimated No. of Respondents: 793.

Estimated No. of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 24,583 hours.

Frequency of Collection: Annually and on occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM 223Y), 401 M Street, SW., Washington, DC 20460 and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503

Dated: October 1, 1991.

Paul Lalsley,

Director, Regulatory Management Division.

[FR Doc. 91-24199 Filed 10-7-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Crowley Caribbean Transport, Inc.; Agreements Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010390-023.

Title: U.S. Atlantic & Gulf/Ecuador Freight Association.

Parties: Crowley Caribbean Transport, Inc., Lykes Bros. Steamship Co., Inc., Naviera Del Pacifico C.A.

Synopsis: The proposed amendment would authorize the parties to charter space to each other and with parties of the Ecuador Discussion Agreement (Agreement No. 202-010999). It would also permit the parties to establish sailing schedules and port rotations.

Agreement No.: 203-010999-009.

Title: Ecuador Discussion Agreement.

Parties: United States Atlantic and Gulf/Ecuador Freight Association,

Naviera Consolidada S.A., Empresa Naviera Santa, S.A., Compania Chilena de Navigacion Interoceania, S.A., Transportes Navieros Ecuatorianos.

Synopsis: The proposed amendment would authorize the parties to charter space to each other and with parties of the U.S. Atlantic and Gulf/Ecuador Freight Association (Agreement No. 202–010390). It would also permit the parties to establish sailing schedules and port rotations.

Agreement No.: 206–011239–003.

Title: United States/Middle East and Indian Subcontinent Discussion Agreement.

Parties: The "8900" Lines, The West Coast/Middle East and West Asia Rate Agreement, American President Lines, Ltd., A.P. Moller-Maersk Line, National Shipping Company of Saudi Arabia, Sea-Land Service, Inc., United Arab Shipping Company (S.A.G.), Waterman Steamship Corporation.

Synopsis: The proposed amendment would add Jugolinija as a party to the Agreement. It would also make technical changes to the Agreement.

Dated: October 2, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–24150 Filed 10–7–91; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 91–38]

Italian Line v. Seawind Line, Inc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Italian Line ("Complainant") against Seawind Line, Inc. ("Respondent") was served October 2, 1991. Complainant alleges that Respondent engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. 1709(a)(1), by failing to pay rates and charges due in connection with the transportation and handling of five forty-foot containers shipped from Savannah, Georgia to Fos, France.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by October 2, 1992, and the final decision of the Commission shall be issued by February 1, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 91–24151 Filed 10–7–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Wilbur M. Jenkins, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 29, 1991.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Wilbur M. Jenkins, Georgetown, Kentucky; to acquire an additional 13.51 percent of the voting shares of Georgetown Bancorp, Inc., Georgetown, Kentucky, for a total of 30.73 percent.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. William Duncan MacMillan, Minneapolis, Minnesota; to acquire 33 percent; Lee R. Anderson, Sr., Minneapolis, Minnesota; to acquire an additional 8.5 percent for a total of 33 percent; and Michael J. Pint, Golden Valley, Minnesota, to acquire 9.5 percent of the voting shares of Rocky Mountain Bankshares, Inc., Aspen, Colorado, and thereby indirectly acquire The Bank of Aspen, Aspen, Colorado.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Maurice E. Moore, Jr., Carrollton, Texas; to acquire an additional 15.54 percent of the voting shares of City National Bancshares, Inc., Carrollton, Texas, for a total of 25.41 percent, and thereby indirectly acquire City National Bank of Carrollton, Carrollton, Texas.

2. Jerry C. Smith, Azle, Texas; to acquire an additional 8.11 percent of the voting shares of Azle Bancorp, Azle, Texas, for a total of 31.61 percent, and thereby indirectly acquire Azle State Bank, Azle, Texas.

Board of Governors of the Federal Reserve System, October 2, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-24153 Filed 10-7-91; 8:45 am]

BILLING CODE 6210-01-F

Stichting Administratiekantoor ABN AMRO Holding, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of

fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than October 29, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Stichting Administratiekantoor ABN AMRO Holding, Amsterdam, The Netherlands; Stichting Prioriteit ABN AMRO Holding, Amsterdam, The Netherlands; ABN AMRO Holding N.V., Amsterdam, The Netherlands; ABN AMRO Bank N.V., Amsterdam, The Netherlands; and ABN AMRO North America, Inc., Chicago, Illinois; to acquire The Talman Home Federal Savings and Loan Association of Illinois, Chicago, Illinois ("Thrift"), and thereby engage in operating a savings association pursuant to § 225.25(b)(9); the origination, sale, and servicing of residential mortgage loans through Talman Home Mortgage Corporation, Chicago, Illinois, a wholly owned subsidiary of Thrift, pursuant to § 225.25(b)(1); credit related insurance activities through Talman Insurance Services, Inc., Chicago, Illinois, a wholly owned subsidiary of Thrift, pursuant to § 225.25(b)(8); and providing securities brokerage services restricted to buying and selling securities through Talman Insurance Services, Inc., solely for the account of customers pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 2, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-24154 Filed 10-7-91; 8:45 am]

BILLING CODE 6210-01-F

Whitaker Bank Corporation of Kentucky, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 29, 1991.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Whitaker Bank Corporation of Kentucky, Lexington, Kentucky; to become a bank holding company by acquiring 95.53 percent of the voting shares of Whitaker Bancorp, Inc., Lexington, Kentucky, and thereby indirectly acquire The State National Bank of Frankfort, Frankfort, Kentucky; Powell County Bank, Stanton, Kentucky; The First National Bank of Carlisle, Carlisle, Kentucky; Peoples Bank & Trust Company of Madison County, Berea, Kentucky; and The Garrard Bank & Trust Company, Lancaster, Kentucky; and by acquiring 99.81 percent of the voting shares of Whitaker Bancshares, Inc., Lexington, Kentucky, and thereby indirectly acquire The First National Bank of Georgetown, Georgetown, Kentucky; The Bank of Whitesburg, Whitesburg, Kentucky; and Morehead National Bank, Morehead, Kentucky.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Citizens Financial Corp., Charles City, Iowa; to acquire 100 percent of the voting shares of Alta Vista Bancshares, Alta Vista, Iowa, and thereby indirectly acquire Alta Vista State Bank, Alta Vista, Iowa.

Board of Governors of the Federal Reserve System, October 2, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-24155 Filed 10-7-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N-0294]

Carl S. Akey, Inc., et al.; Withdrawal of Approval of New Animal Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of six new animal drug applications (NADA's) based on the written requests of the various sponsors. Some of the drugs covered by these applications are no longer marketed; the other drugs no longer require NADA approval because of changes in the animal drug regulations. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the regulations to reflect the withdrawal of approval.

EFFECTIVE DATE: October 18, 1991.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8749.

SUPPLEMENTARY INFORMATION: The sponsors of the six NADA's listed below have requested, in writing, that FDA withdraw approval of the applications. The sponsors have informed the agency that some of the drugs covered by these applications are no longer marketed. NADA approval is no longer required to manufacture the other drugs due to changes in the animal drug regulations (51 FR 7382 at 7392, March 3, 1986). The NADA's in question are listed below

NADA	Sponsor	Product
99-098	Growmark, Inc., 1701 Towanda Ave., Bloomington, IL 61701	Tylosin phosphate.
130-465	Growmark, Inc., 1701 Towanda Ave., Bloomington, IL 61701	Tylosin/sulfomethazine.
132-657	Carl S. Akey, Inc., P.O. Box 607, Lewisburg, OH 45338	Lincomycin hydrochloride.
132-660	Feed Specialties Co., Inc., 1877 NE., 58th Ave., Des Moines, IA 50313	Lincomycin hydrochloride.
133-832	Growmark, Inc., 1701 Towanda Ave., Bloomington, IL 61701	Lincomycin hydrochloride.

NADA	Sponsor	Product
134-701	Mac-Page, Inc., 1600 South Wilson Ave., Dunn, NC 28334	Lincomycin hydrochloride.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of the NADA's listed above and all supplements and amendments thereto is hereby withdrawn, effective October 18, 1991.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending those portions of the regulations in 21 CFR 558.325, 558.625, and 558.630 to reflect this withdrawal of approval.

Dated: October 1, 1991.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 91-24213 Filed 10-7-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91F-0359]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of iron(+), (η^5-2,4-cyclopentadien-1-yl) [(1,2,3,4,5,6,-η)-(1-methylethyl)benzene]-, hexafluorophosphate(1-) as a photoinitiator in adhesives for use in food-contact articles.

FOR FURTHER INFORMATION CONTACT: Daniel H. Harrison, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 1B4285) has been filed on behalf of the Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532-2188.

The petition proposes to amend the food additive regulations in § 175.105 Adhesives (21 CFR 175.105) to provide for the safe use of iron(+), (η^5-2,4-cyclopentadien-1-yl) [(1,2,3,4,5,6,-η)-(1-methylethyl)benzene]-, hexafluorophosphate(1-) as a photoinitiator in adhesives for use in food-contact articles.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: September 24, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-24211 Filed 10-7-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

White House Conference on Indian Education Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed schedule of the forthcoming meeting of the White House Conference on Indian Education Advisory Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. The White House Conference on Indian Education Advisory Committee is established by Public Law 100-297, part E. The Committee is established to assist and advise the Task Force in the planning and conducting the conference.

DATE, TIME, AND PLACE: October 25, 1991, at 9 a.m. to 5 p.m. and October 26, 1991, at 9 a.m. to 5. p.m. at the Ramada Inn Central Hotel, 7007 Grover Street, Omaha, Nebraska 68106.

FOR FURTHER INFORMATION CONTACT: Dr. Benjamin Atencio, Deputy Director, White House Conference on Indian Education, U.S. Department of Interior, 1849 C St., NW., MS 7026-MIB, Washington, DC 20240; telephone 202-208-7167; fax 208-4868.

AGENDA: The Advisory Committee for the White House Conference on Indian Education will discuss and advise the Task Force on all aspects of the Conference and actions which are necessary for the conduct of the Conference. Summary minutes of the meeting will be made available upon request. The meeting of the Advisory Committee will be open to the public.

Items To Be Discussed

Pre-Conference activities; selection process for participants; budget and administrative matters; selection of Co-chair of the Conference; discussion of State Reports; Subcommittee activities, Conference agenda and other matters related to the Conference.

Dated: October 3, 1991.

Mark Stephenson

Assistant to the Secretary and Director of Communication.

[FR Doc. 91-24160 Filed 10-7-91; 8:45 am]

BILLING CODE 4310-RK-M

Bureau of Land Management

[OR-100-02-6321-04; G2-001]

Meeting of the Roseburg District Advisory Council

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The District Advisory Council for the Bureau of Land Management, Roseburg District will meet November 5, 1991, in the District Office Auditorium, starting at 8:30 a.m. On the agenda are briefings on the following topics: various proposed legislation addressing the Northwest timber crisis, the application made by the BLM Director to exempt 44 timber sales from the Endangered Species Act, an update on the District Resource Management Plan (RMP), and an overview of the Geographic Information System (GIS) and its application to the RMP. There will be an opportunity for public comments before the Council at 10 a.m.

ADDRESSES: Bureau of Land Management, Roseburg District, 777 NW. Garden Valley Blvd., Roseburg, OR 97470.

FOR FURTHER INFORMATION CONTACT: Mel Ingeroi, Public Affairs Specialist (503)672-4491.

SUPPLEMENTARY INFORMATION: Comments for the Council can be mailed to the District Manager prior to the meeting or presented to the Council during the meeting. Summary minutes will be available for public review within 30 days of the meeting.

Dated: September 30, 1991.

James A. Moorhouse,

District Manager.

[FR Doc. 91–24234 Filed 10–7–91; 8:45 am]

BILLING CODE 4310–33–M

[NM–060–4320–02–607]

Roswell District Multiple Use Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Roswell District Multiple Use Advisory Council Meeting.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the Roswell District Multiple Use Advisory Council.

DATES: Wednesday, October 30, 1991, beginning at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Tony L. Ferguson, Associate District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, NM 88201, (505) 622–9042.

SUPPLEMENTARY INFORMATION: The proposed agenda will include presentations on the Sikes Act, Lechugilla Cave/Karst Area, Black River update, Ranger Program, Hazardous Materials Program, Potash/Oilfield Overlap, and the RMP/Amendment Issue. Summary minutes will be maintained in the District Office and will be available for public inspection during regular business hours within 30 days following the meeting. Copies will be available for the cost of duplication.

Dated: September 26, 1991.

Armando A. Lopez,

Acting District Manager.

[FR Doc. 91–24149 Filed 10–7–91; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–761709

Applicant: J.S. Van Alsburg, Tampa, Florida.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas, dorcas*) culled from the captive herd maintained by Mr. H v Z Kock, Merriman, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT–761679

Applicant: Oklahma City Zoological Park, Oklahoma City, OK.

The applicant requests a permit to purchase in interstate commerce one male and two female captive-hatched Darwin's Rhea (*Pterocnemia pennata pennata*) from International Animal Exchange, Ferndale, Michigan for the purpose of captive propagation.

PRT–761985

Applicant: San Diego Zoological Society, San Diego, CA.

The applicant requests a permit to import two captive-born Kuhl's deer (*Cervus porcinus kuhli*) from the Department of Wildlife and Natural Parks, Kuala Lumpur, Malaysia, for breeding purposes.

PRT–761983

Applicant: James R. Spotila, Philadelphia, PA.

The applicant requests a permit to import live and dead eggs and hatchlings (taken from doomed nests), tissue samples, and blood from leatherback sea turtles (*Dermochelys coriacea*) and green sea turtles (*Chelonia mydas*) from Costa Rica and the Grand Cayman Islands for the purpose of scientific research.

PRT–762271

Applicant: James R. Spotila, Philadelphia, PA.

The applicant requests a permit to take (capture and release for collection of blood and tissue samples, implant thermistors and thermocouple leads for collection of temperature data, and monitor via satellite transmitters) leatherback sea turtles (*Dermochelys coriacea*) and green sea turtles (*Chelonia mydas*) on the eastern coast of North America from Virginia to New Brunswick, Canada.

PRT–746056

Applicant: LSA Associates, Inc., Riverside, CA.

The applicant requests a permit to capture, collect hair samples, and release Stephens' Kangaroo rats (*Dipodomys stephensi*) in Riverside, San Diego and San Bernardino Counties for the purpose of determining the presence or absence of this species on certain lands.

PRT–756543

Applicant: Richard Rhode, El Monte, CA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) to be culled from the captive herd maintained by Mr. Theo Erasmus, Kroostad, Republic of South Africa, for the purpose of enhancement of survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, VA 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, VA 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: October 2, 1991.

Maggie Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 91–24121 Filed 10–7–91; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Centralia, WA

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a complaint styled *United States* v. *City of Centralia et. al.* was filed in the United States District Court for the Western District of Washington on September 27, 1988. On September 26, 1991, a consent decree was lodged with the Court in settlement of the allegations in that complaint. The complaint, brought pursuant to section 301 of the Clean Water Act ("the Act") 33 U.S.C. 1311, alleged *inter alia* that on numerous occasions between 1985 and 1988, the City violated the Act by discharging BOD and TSS in excess of its permit limitations.

Under the terms of the proposed consent decree, the defendents agree to pay the United States the sum of $20,000 in Civil penalties for the violations alleged in the government's complaint.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States* v. *City of Centralia et. al.*, D.J. Ref. 90–5–1–1–3187.

The Proposed consent decree may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave. NW., Box 1097, Washington, DC 20004, (202) 347–7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $1.75 (25 cents per page reproduction costs) payable to Consent Decree Library. The proposed Consent Decree may also be reviewed at the Environmental Protection Agency:

EPA Region X

Contact: Ted Rogowski, Office of Regional Counsel, U.S. Environmental Protection Agency, Region X, 1200 Sixth Avenue, Seattle, WA 98101

and the Office of the United States Attorney:

Brian Kipnis, Assistant United States Attorney, 3600 Seafirst Avenue Plaza, 800 Fifth Avenue, Seattle, WA 98104

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 91–24138 Filed 10–7–91; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Under the Clean Air Act In United States v. Michigan Mechanical Abatement

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that on September 26, 1991, a proposed Consent Decree in *United States* v. *Michigan Mechanical Abatement*, Civil Action No. 91–CV–75011–DT, was lodged with the United States District Court for the Eastern District of Michigan.

The proposed Consent Decree resolves the claims against Michigan Mechanical for violating section 112(c) of the Clean Air Act, and the National Emission Standards for Hazardous Air Pollutants for Asbestos, 40 CFR part 61, subpart M. The proposed Consent Decree requires Michigan Mechanical Abatement to: (a) Achieve and maintain full compliance with all requirements of the National Emission Standards for Hazardous Air Pollutants for Asbestos; (b) pay stipulated penalties for any violation of the notice provisions of the National Emission Standards for Hazardous Air Pollutants for Asbestos; and (c) pay a $2,800 civil penalty.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Acting Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. All comments should refer to *United States* v. *Michigan Mechanical Abatement*, DOJ Ref. No. 90–5–2–1–1621.

The proposed Consent Decree may be examined at the Region V Office of the U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the proposed Consent Decree may also be obtained in person or by mail from the Environmental Enforcement Section Document Center, Box 1097, 601 Pennsylvania Ave., NW., Washington, DC 20004 ((202) 347–7829). Any request for a copy of the Decree should be accompanied by a check in the amount of $2.25 (9 pages at 25 cents per page reproduction cost) payable to "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 91–24139 Filed 10–7–91; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

National Cooperative Research Notification; Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") on August 19, 1991, filed a written notification on behalf of Bellcore and PairGrain Technologies ("PairGain") simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties to the venture and (2) the nature and objective of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

PairGrain is a California corporation with its principal place of business at 1815 W. 205th Street, #208, Torrance, California 90501.

Bellcore and PairGain entered into an agreement effective as of June 24, 1991 to engage in cooperative research of high speed data transmission over wire facilities to better understand the feasibility and application of this technology for exchange and exchange access services, including prototype fabrication for the experimental demonstration of such technology.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–24144 Filed 10–7–91; 8:45 am]

BILLING CODE 4410–01–M

National Cooperative Research Notification; Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") on August 19, 1991, filed a written notification on behalf of Bellcore and Graphics Communication America, Ltd. ("GCA") and Prism Interactive Products, Ltd. ("Prism") simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties to the venture and (2) the nature and objective of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

GCA is a Delaware corporation having an office address of 751 Roosevelt Road, Building 7–200, Glen Ellyn, Illinois 60137.

Prism is a Delaware corporation having an office address of 751 Roosevelt Road, Building 7–200, Glen Ellyn, Illinois 60137.

Effective August 1, 1991, Bellcore, GCA, and Prism entered into an agreement to engage in cooperative research collaboration toward understanding the application of video compression algorithms, and new technology in the area of Real-Time High Definition Television Encoding and Decoding for film and video material, and for use, amongst others, in exchange and exchange access services and with T3 lines and Digital Storage Media, demonstrating the feasibility of research concepts by means of experimental prototypes and experimental systems of such technology and to undertake research to provide a basis for related

submissions to public standards organizations.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-24142 Filed 10-7-91; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Notification; Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") on August 15, 1991, filed a written notification on behalf of Bellcore and Motorola, Inc. ("Motorola") simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties to the venture and (2) the nature and objective of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

Motorola is a Delaware corporation with its principal place of business at 1303 East Algonquin Road, Schaumburg, Illinois 60196.

Bellcore and Motorola entered into a Collaborative Agreement on May 17, 1991, to explore the feasibility of advanced interconnect technology in support of future broadband integrated services with respect to digital exchange and exchange access networks. Work pursuant to the Agreement will include the creation of experimental prototype multichip modules for demonstration purposes.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-24140 Filed 10-7-91; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Notification; The SQL Access Group, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), The SQL Access Group, Inc. ("the Group") on September 9, 1991, has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The additional notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On March 1, 1990, the Group filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on April 5, 1990 (55 FR 12750). On June 5, 1990, August 31, 1990, December 6, 1990, March 21, 1991, and June 7, 1991, the Group filed additional written notifications. The Department published a notice in the **Federal Register** in response to the additional notifications on July 18, 1990 (55 FR 29277), October 17, 1990 (55 FR 42081), January 7, 1991 (56 FR 536), April 25, 1991 (56 FR 19126), and July 19, 1991 (56 FR 33308), respectively.

The identities of the additional parties to the Group are:

Boeing Computer Services, P.O. Box 24346, MS 7L-24, Seattle, WA 98124-0346

Computer Corporation of America, 4 Cambridge Center, Cambridge, MA 02142

Honeywell, Inc., 3660 Tech Drive, Minneapolis, MN 55418

The following previously-identified members are no longer members of the Group:

Mimer Software AB, Box 1713, S-751 47, Sweden

Sterling Software, 21050 Vanowen Street, Canoga Park, CA 91304

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-24141 Filed 10-7-91; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Notification; Southwest Research Institute

Notice is hereby given that, on September 9, 1991 pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission of a project entitled "Further Development of Molecular Sieves to Reduce Cold Start Emissions from Automobiles". The notification discloses: (1) The identities of the parties to the project and (2) the nature and objective of the project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the project and its general areas of planned activities are given below:

The parties to the project are: Kemira Oy, Degussa AG, Hyundai America Technical Center, Inc., W.R. Grace & Co., Honda R&D Co., Ltd., Isuzu Motors Limited, Volkswagen AG, Centro Richerche Fiat, Corning Incorporated and Nissan Research & Development, Inc. The project was effective as of June 24, 1991.

The purpose of the project is to develop the use of a molecular sieve trap such as zeolites to reduce cold start hydrocarbons on a typical technology automobile to a level that will meet future California ULEV (Ultra Low Emission Vehicle) and Unites States 1990 Clean Air Act Amendments. The major tasks involve: (1) A brief literature search, (2) contact with molecular sieve suppliers and researchers, (3) acquisition of candidate materials, (4) evaluation of the candidate materials on an engine test stand using engine exhaust gas and (5) evaluation of the most promising materials on a vehicle using the U.S. Environmental Protection Agency Federal Test Procedure (FTP) for light duty vehicles.

Membership in this group research project remains open, and the parties intend to file additional written notification disclosing all changes in membership of this project.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-24145 Filed 10-7-91; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 91-55; Application No. D-7088]

Transactions Between Individual Retirement Accounts and Authorized Purchasers of American Eagle Coins

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Correction.

SUMMARY: In 56 FR published at page 49209 on Friday, September 27, 1991, make the following correction: 1. On page 49211, in the third column in section III(i), in the second line, delete "(enter date 90 days after grant of the

final exemption)" and insert therein "December 22, 1991".

Signed at Washington, DC, this 3rd day of October 1991.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 91-24194 Filed 10-7-91; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 91-59; Exemption Application Nos. D-8496 & 8503]

Grant of Individual Exemptions; NCNB Real Estate Fund

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

NCNB Real Estate Fund (the Fund) Located in Charlotte, North Carolina

[Prohibited Transaction Exemption 91-59; Exemption Application Nos. D-8496 and D-8503]

Exemption

The restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale for cash of a certain parcel of real property (the Parcel) from the Fund to NCNB National Bank of North Carolina, a party in interest with respect to employee benefit plans participating in the Fund, provided the Fund receives no less than the greater of $16,200 or the fair market value for the Parcel at the time of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 15, 1991, at 56 FR 22458.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 3rd day of October, 1991.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 91-24195 Filed 10-7-91; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Enforcement of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 11:30 a.m., Thursday, October 24, 1991, in room S-4215 BC, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Enforcement Working Group was formed by the Advisory Council to study issues relating to Enforcement for employee benefit plans covered by ERISA.

The purpose of the October 24, meeting is to continue to review public testimony received during a meeting of the work group on September 12, 1991, receive additional public comments and consider presenting a report for discussion by the Council. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the Working Group should submit written requests on or before October 22, 1991.

to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before October 22, 1991.

Signed at Washington, DC, this 2nd day of October, 1991.

David George Ball,

Assistant Secretary for Pension and Welfare Benefit Administration.

[FR Doc. 91-24102 Filed 10-7-91; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Small Business of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9:30 a.m. Thursday, October 24, 1991, in room S-4215 BC, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Small Business Working Group was formed by the Advisory Council to study issues relating to Small Business for employee benefit plans covered by ERISA.

The purpose of the October 24, meeting is to review public testimony received during a meeting of the work group on September 11, 1991, receive additional public comments and review a draft of an interim report by the Work Group to the Council and agree upon its contents. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the Working Group should submit written requests on or before October 22, 1991, to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before October 22, 1991.

Signed at Washington, DC this 2nd day of October, 1991.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 91-24103 Filed 10-7-91; 8:45 am]

BILLING CODE 4510-29-M

Adviory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Retiree Medical Benefits of the Advisory Council on Employee Welfare and Pension Benefits Plans will be held at 1:30 p.m. Thursday, October 24, 1991, in room S-4215 BC, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Retiree Medical Benefits Working Group was formed by the Advisory Council to study issues relating to Retiree Medical Benefits for employee benefit plans covered by ERISA.

The purpose of the October 24, meeting is to review public testimony received during a meeting of the work group on September 13, 1991, receive additional public comments and consider presenting a report for discussion by the Council. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the Working Group should submit written requests on or before October 22, 1991, to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before October 22, 1991.

Signed at Washington, DC This 2nd day of October, 1991.

David George Ball,

Assistant Secretary for Pension and Welfare Benefit Administration.

[FR Doc. 91-24104 Filed 10-7-91; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Friday, October 25, 1991, in suite S-4215 ABC, U.S. Department of Labor Building, Third and Constitution Avenue NW., Washington, DC 20210.

The purpose of the Seventieth meeting the Secretary's ERISA Advisory Council which will begin at 9:30 a.m., is to receive and discuss progress reports from each of the Council's work groups; i.e., Enforcement, Retiree Medical Benefits, Small Business Retiree Plans, and to invite public comment on any aspect of the administration of ERISA.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before October 22, 1991 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N-5677, 200 Constitution Avenue NW., Washington, DC 20210. Individuals, or representatives of organizations wishing to address the Advisory Council should forward their request to the Executive Secretary or telephone (202) 523-8753. Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before October 22, 1991.

Signed at Washington, DC, this 2nd day of October, 1991.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 91-24105 Filed 10-7-91; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (91-84)]

NASA Advisory Council (NAC), Aerospace Medicine Advisory Committee (AMAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Medicine Advisory Committee.

DATES: October 16, 1991, 8:30 a.m. to 5 p.m.; October 17, 1991, 8:30 a.m. to 5 p.m.; and October 18, 1991, 8 a.m. to Noon.

ADDRESSES: National Aeronautics and Space Administration, room 226, 600 Independence Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. J. Richard Keefe, Code SB, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1530).

SUPPLEMENTARY INFORMATION: The Aerospace Medicine Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long-range planning of aerospace medicine research. The Committee will meet to discuss the status of OSSA, Fiscal Year (FY) 1992 strategic planning, and long-range planning for life sciences. The Committee is chaired by Dr. Harry C. Holloway and is composed of 23 members. The meeting will be closed to the public from 8:30 a.m. to 10:15 a.m. on October 17, 1991; and 10 a.m. to Noon on October 18, 1991, for a discussion of the qualifications of additional candidates for membership. Such a discussion would invade the privacy of the candidates and other individuals involved. Since this discussion will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting will be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including Committee members). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

TYPE OF MEETING: Open—except for closed sessions noted in the agenda below.

Agenda

Wednesday, October 16
- 8:30 a.m.—Introductory Remarks.
- 9 a.m.—Life Sciences Division Status.
- 10:15 a.m.—Office of Space Science and Applications Status Report and Fiscal Year 1992 Planning.
- 1 p.m.—Review of Life Science Long-Range Planning for Environmental Health and Life Support.
- 3:15 p.m.—Review of Life Science Long-Range Planning for Countermeasures.
- 5 p.m.—Adjourn.

Thursday, October 17
- 8:30 a.m.—Closed Session.
- 10:15 a.m.—Review of Life Science Long-Range Planning for Medical Care.
- 1 p.m.—Review of Life Science Long-Range Planning for Program Principles.
- 3:15 p.m.—NASA Office of Exploration Planning Activities.
- 4 p.m.—Committee Discussion and Writing Session.
- 5 p.m.—Adjourn.

Friday, October 18
- 8 a.m.—Review of Action Items and Committee Writing Assignments.
- 10 a.m.—Closed Session.

Noon—Adjourn.

Dated: October 1, 1991.

John W. Gaff,

Advisory Committee Management Officer. National Aeronautics and Space Administration.

[FR Doc. 91-24172 Filed 10-7-91; 8:45 am]

BILLING CODE 7510-01-M

[Notice (91-85)]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, High-Speed Rotorcraft Technology Task Force.

DATES: November 1, 1991, 8 a.m. to 3 p.m.

ADDRESSES: McDonnell Douglas Corporation, room 695, McDonnell Boulevard and Airport Road, St. Louis, MO 63134.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Whitehead, Office of Aeronautics, Exploration and Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2805.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics, Exploration and Technology (OAET) on aeronautics research and technology activities. Special task forces are formed to address specific topics. The High-Speed Rotorcraft Technology Task Force, chaired by Mr. Stan Martin, is composed of nine members.

The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the task force members and other participants).

TYPE OF MEETING: Open.

Agenda

November 1, 1991
- 8 a.m.—Opening Remarks.
- 8:15 a.m.—Review Minutes of Last Meeting.
- 8:45 a.m.—High-Speed Rotorcraft Status & Cost Data.
- 9:30 a.m.—Program Issues and Discussion.
- 12:30 p.m.—Task Force Recommendations.
- 2:30 p.m.—Wrap-up.
- 3 p.m.—Adjourn.

Dated: October 1, 1991.

John W. Gaff,

Advisory Committee Management Officer. National Aeronautics and Space Administration.

[FR Doc. 91-24173 Filed 1-7-91; 8:45 am]

BILLING CODE 7510-01-M

[Notice (91-86)]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Space Physics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science

and Applications Advisory Committee, Space Physics Subcommittee.

DATES: October 23, 1991, 8:30 a.m. to 5:30 p.m.; October 24, 1991, 8:30 a.m. to 5:30 p.m.; and October 25, 1991, 8:30 a.m. to 3 p.m.

ADDRESSES: The Holiday Inn Capitol, 550 C Street, SW., Columbia North Room, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. George L. Withbroe, Code SS, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–1544).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee (SSAAC) consults with and advises the NASA Office of Space Science and Applications (OSSA) on long-range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Space Physics Subcommittee provides advice to the Space Physics Division and to the SSAAC on operation of the space physics program and on formulation and implementation of the space physics research strategy. The Subcommittee will meet to discuss divisional overviews, supporting research and technology (SR&T), Woods Hole workshop issues, reports from the Management Operations Working Groups (MOWG's), status of flight missions, and future missions. The Acting Chairman of the Subcommittee is Dr. Glenn M. Mason. The Subcommittee is composed of 25 members. The meeting will be open to the public up to the capacity of the room (approximately 50 persons including Subcommittee members). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

TYPE OF MEETING: Open.

Agenda

Wednesday, October 23
- 8:30 a.m.—Opening Remarks.
- 8:45 a.m.—Space Physics Division Overview.
- 11 a.m.—SR&T Program Review.
- 2 p.m.—Explorer Program History.
- 3 p.m.—Advanced Technology Development Funding Situation.
- 3:35 p.m.—Active Missions Presentation.
- 5:30 p.m.—Adjourn.

Thursday, October 24
- 8:30 a.m.—Discussion of Subcommittee Business.
- 8:45 a.m.—MOWG Reports.
- 10 a.m.—Discussion of Woods Hole Issues.
- 1:15 p.m.—Status of Planned Missions.
- 3:45 p.m.—Science Presentation.
- 4:45 p.m.—Discussion and Writing Assignments.
- 5:30 p.m.—Adjourn.

Friday, October 25
- 8:30 a.m.—Writing Groups.
- 1:15 p.m.—Critique of Reports from Writing Groups.
- 3 p.m.—Adjourn.

Dated: October 1, 1991.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91–24174 Filed 10–7–91; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting and request for comments.

SUMMARY: The Nuclear Regulatory Commission (NRC) will convene a meeting of the Advisory Committee on the Medical uses of Isotopes (ACMUI) to request ACMUI guidance on certain regulatory and administrative issues including the practice of radiopharmacy, supervision of physicians in training, and the administration of byproduct material to pregnant or nursing females. The NRC staff will provide the ACMUI with a review of language for rulemaking and a discussion of pregnancy/nursing assessment. The ACMUI will provide comments and guidance on these issues.

DATES: The meeting will be held at 8 a.m. on November 7 and 8, 1991.

ADDRESSES: Sheraton Reston Hotel, 11810 Sunrise Valley Drive, Reston, Virginia.

COMMENTS: Submit comments to the Secretary of the Commission, ATTN: Advisory Committee Management Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Larry W. Camper, Office of Nuclear Material Safety and Safeguards, MS 6–H–3, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3417.

SUPPLEMENTARY INFORMATION:

American College of Nuclear Physicians/Society of Nuclear Medicine (ACNP/SNM) Radiopharmaceutical Petition

On June 15, 1989, the ACNP/SNM filed a petition with NRC addressing five issues related to the preparation and use of radiopharmaceuticals. On August 23, 1990, the NRC published the Interim Final Rule addressing two of the issues in the petition. The remaining issues in that petition are: Compounding radiopharmaceuticals, the use of byproduct material in medical research, and use of radiolabeled biologics. Currently, NRC regulations are silent on these issues; however, NRC licensees may perform these activities through license conditions. NRC is attempting to address these issues by modifying its regulations to establish an "authorized nuclear pharmacist"—who would have the authority and responsibility for compounding—to allow medical research, using radioisotopes in accordance with applicable Food and Drug Administration (FDA) regulations, and to allow the use of radiolabeled biologics for which the FDA has approved a Product License Application (PLA). The NRC staff will present a recommendation on each of these issues. The ACMUI members are expected to provide comments on the staff's recommendations.

Supervision by Authorized Users of Physicians-in-Training

The Committee will assist NRC in its continuing review of this topic. Presentations by medical educators involved in the training and preceptorship of physicians desiring to utilize radioactive byproduct material will be considered by Committee members and the NRC staff. The staff will solicit input from ACMUI on the development of guidance to clarify physician preceptorship and supervision while in training.

Administration of Byproduct Material to Pregnant or Nursing Patients

The NRC staff will present the issues and a recommendation regarding unintended radiation doses or dosages to an embryo, fetus, or nursing infant, resulting from administration of radiopharmaceuticals or radiation to pregnant or nursing patients. Representatives from several medical societies are expected to present their positions on the responsibilities of referring physicians, "authorized-user" physicians, and other individuals working under the supervision of the "authorized user" to determine the pregnancy and nursing status of a patient, before diagnostic or therapeutic administrations. The ACMUI members are expected to provide comment on the staff's recommendation.

Status Report on the Expansion of ACMUI

Calls for nomination were published in the **Federal Register**, December 24, 1990, and April 26, 1991. NRC solicited nominations for: An individual qualified to address patient's rights and care; a person with broad experience in medical regulation as conducted by individual States; and a brachytherapy physician. The Commission has selected individuals to fill these positions.

Conduct of Meeting

Barry Siegel, M.D. will chair the meeting. Dr. Siegel will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons may submit written comments by sending a reproducible copy to the Secretary of the Commission (see "COMMENTS" heading). Comments must be received by October 15, 1991, to ensure consideration at the meeting. The transcript of the meeting will be kept open until November 30, 1991, for inclusion of written comments. It is not necessary to resubmit written comments that were submitted in response to the **Federal Register** notices mentioned in this meeting notice.

2. Persons who wish to make oral statements should inform Mr. Camper in writing by October 25, 1991. Statements must pertain to topics at hand. The Chairman will rule on requests to make oral statements. Opportunity for members of the public to make oral statements will be based on the order in which requests are received. In general, oral statements should be limited to approximately 5 minutes. Oral statements may be supplemented by detailed written statements for the record. Rulings on who may speak, the order of presentations, and time allotments may be obtained by calling Mr. Camper, 301–492–3417 between 9 a.m. and 5 p.m. E.S.T. on November 4, 1991.

3. At the meeting, questions from attendees other than committee members, NRC consultants, and NRC staff will be permitted at the discretion of the Chairman.

4. The transcript, minutes of the meeting, and written comments will be available for inspection, and copying for a fee, at the NRC Public Document Room 2120 L Street NW., Lower Level, Washington, DC 20555, on or about December 6, 1991.

5. Seating for the public will be on a first-come, first-served basis.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily section 161a), the Federal Advisory Act (5 U.S.C. App.) and the Commission's regulations in title 10, Code of Federal Regulations, part 7.

Dated at Washington, DC this 1st day of October, 1991.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Advisory Committee, Management Officer.

[FR Doc. 91–24110 Filed 10–7–91; 8:45 am]

BILLING CODE 7590–01–M

ACNW Working Group on the NRC Staff Computer Modeling and Performance Assessment Capabilities in the High- and Low-Level Waste Programs; Meeting

The ACNW Working Group on the NRC Staff Computer Modeling and Performance Assessment Capabilities in the High- and Low-Level Waste Programs will hold a meeting on October 16-17, 1991, room P–110, 7920 Norfolk Avenue, Bethesda, Maryland. The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, October 16, 1991—8:30 a.m. until the conclusion of business.

Thursday, October 17, 1991—8:30 a.m. until the conclusion of business.

The purpose of the meeting will be to review whether or not the NRC staff has developed a suitable performance assessment program and whether the NRC staff has adequate equipment, expertise and training to conduct high- and low-level radioactive waste computer modeling. Furthermore, the ACNW Working Group will examine the NRC staff's modeling capability available in-house as opposed to the capability available through the Center for Nuclear Waste Regulatory Analysis or its other high- and low-level waste contractors. The NRC staff will be requested to characterize what they consider these performance assessment capabilities to be and how they expect these performance assessment and modeling needs will change.

Oral statements may be presented by members of the public with the concurrence of the ACNW Working Group Chairman; written statements will be accepted and made available to the Working Group. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the ACNW Working Group, their consultants, and staff. Persons desiring to make oral statements should notify the ACNW staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the ACNW Working Group, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The ACNW Working Group will hear presentations by and hold discussions with the NRC staff and their consultants, National Laboratories, and other interested parties, as appropriate.

Further information regarding the agenda for this meeting, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Giorgia Gnugnoli, ACNW (telephone 301/492–9851) between 8:15 a.m. and 6 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: September 30, 1991.

R.K. Major,

Chief, Nuclear Waste Branch.

[FR Doc. 91–24108 Filed 10–7–91; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 36th meeting on October 18, 1991, 8:30 a.m.—5 p.m., room P–110, 7920 Norfolk Avenue, Bethesda, MD. The entire meeting will be open to the public.

The agenda for the subject meeting shall be as follows:

A. Continue deliberations on a request from the Commission regarding a systems analyses approach to the storage of spent fuel.

B. Begin deliberations on a request from Commissioner Rogers regarding whether the NRC staff has developed a suitable performance assessment program and whether the NRC staff has adequate equipment, expertise, and training to conduct high- and low-level waste computer modeling.

C. Briefing by NRC's Division of High Level Waste Management staff on their basis for establishing a probability limit for distinguishing between unlikely and very unlikely events. This relates to the alternative approach to the probabilistic section of the containment requirements in 40 CFR 191.

D. Discuss anticipated and proposed Committee activities, future meeting agenda, administrative, and organization matters, as appropriate. Also, discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ANCW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director of call the recording (301/496–4600) for the current schedule if such rescheduling would result in major inconvenience.

Dated: October 1, 1991.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 91–24109 Filed 10–7–91; 8:45 am]

BILLING CODE 7509–01–M

Advisory Committee on Reactor Safeguards; Subcommittee on Severe Accidents; Meeting

The Subcommittee on Severe Accidents will hold a meeting on October 24–25, 1991, room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, October 24, 1991—8:30 a.m. until the conclusion of business.

Friday, October 25, 1991—8:30 a.m. until the conclusion of business.

The Subcommittee will discuss elements of the Severe Accident Research Program.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will hear presentations by and hold discussions with representatives of NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Dean Houston (telephone 301/492–9521) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: September 30, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91–24107 Filed 10–7–91; 8:45 am]

BILLING CODE 7590–01–M

Privacy Act of 1974; Establishment of a New System of Records

AGENCY: Nuclear Regulatory Commission.

ACTION: Establishment of a new system of records.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to establish a new system of records, entitled NRC–26, "Administrative Services Files," in order to track appropriated funds used to subsidize the public transportation costs of NRC employees. The use of appropriated funds for this program is permitted under new authority provided by section 629(a) of Public Law 101–509 that allows Federal agencies to participate in a State or local program that encourages employees to use public transportation. It is anticipated that use of public transportation by NRC employees will result in lighter traffic patterns in the vicinity of the NRC's headquarters buildings located in Montgomery County, Maryland.

DATES: The system of records will take effect without further notice on November 7, 1991, unless comments received on or before that date cause a contrary decision. If, based on NRC's review of comments received, changes are made, NRC will publish a new final notice.

ADDRESSES: Send comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Comments may be hand-delivered to the Gelman Building, 2120 L Street NW. (Lower Level), Washington, DC, between 7:45 a.m. and 4:15 p.m.

FOR FURTHER INFORMATION CONTACT: Donnie H. Grimsley, Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7211.

SUPPLEMENTARY INFORMATION: This new system of records will be used by the NRC's Office of Administration to manage the NRC FULL SHARE program that includes the receipt and distribution of employee applications, monitoring the $21.00 monthly de minimis fringe benefit provided to employees, and coordinating the fare media (MARC rail tickets, METRO rail tickets, METRO bus tickets, and Ride-On passes) to be purchased by employees through the Energy Federal Credit Union (EFCU).

The records in this system of records will include employee applications for FULL SHARE media. This application includes the employee's name, home address, NRC badge number, commuting schedule, and mass transit system(s) used by the employee. Other records in this system of records will include reports from the EFCU on employee purchases of subsidized mass transit tickets and reports from the NRC's Division of Accounting and Finance, Office of the Controller, on use of appropriated funds to subsidize the purchase of fare media.

A report of this system of records, required by 5 U.S.C. 552a(r), as

implemented by OMB Circular A–130, has been sent to the Chairman, Committee on Government Operations, U.S. House of Representatives; the Chairman, Committee on Governmental Affairs, U.S. Senate; and the Office of Management and Budget.

1. The following new system of records, NRC–26, Administrative Services Files, is being proposed for adoption by the NRC.

NRC–26

SYSTEM NAME:

Administrative Services Files—NRC.

SYSTEM LOCATION:

Primary system: Office of Administration, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system: A duplicate system exists, in whole or in part, at the Energy Federal Credit Union, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC Federal Government employees who apply for subsidized mass transit costs.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records consist of employee applications to participate in the NRC FULL SHARE program. This application includes the employee applicant's name, home address, duty station, duty telephone number, badge number, and information regarding employee's commuting schedule and mass transit system(s) used. Other records in the system include reports from the Energy Federal Credit Union on employee purchases of subsidized mass transit tickets, as well as reports from the NRC's Division of Accounting and Finance on the use of subsidized funds for the NRC FULL SHARE program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 629(a) of Public Law 101–159, 104 Statute 1478 (1990).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To report to the Internal Revenue Service the amount of Government funds used by a Government employee that exceeds $21.00 per month;

b. To provide an electronic authorization to the Energy Federal Credit Union to sell Federal subsidized mass transit tickets to employees;

c. To provide statistical reports to the city, county, State, and Federal Government agencies;

d. For the routine uses specified in paragraph numbers 1, 4, 5, and 6 in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper in file folders and on computer disk.

RETRIEVABILITY:

Indexed by name of employee and NRC badge number.

SAFEGUARDS:

Paper records and backup floppy disks are maintained in locked file cabinets under visual control of employees of the Administrative Services Center. Computer files are maintained on a hard drive, access to which is protected by a password. Access to and use of these records is limited to those persons whose official duties require access and Energy Federal Credit Union employees who need authorization to sell federally-subsidized, mass transit tickets.

RETENTION AND DISPOSAL:

Records are retained for one year following the last month of an employee's participation in the subsidized mass transit fare program. Paper copies are destroyed by shredding. Computer files are destroyed by deleting the record from the file.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Administrative Services Center, Division of Contracts and Property Management, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORD ACCESS PROCEDURES:

Same as "Notification Procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification Procedure."

RECORD SOURCE CATEGORIES:

Applications submitted by NRC employees and reports from the Energy Federal Credit Union and the NRC Division of Accounting and Finance.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Dated at Rockville, MD, this 24th day of September 1991.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 91–24112 Filed 10–7–91; 8:45 am]

BILLING CODE 7590–01

[Docket No. 50–206]

Southern California Edison Co., et al.; Issuance of Facility Operating License No. DPR–13

The U.S. Nuclear Regulatory Commission (the Commission) has issued Facility Operating License No. DPR–13 to the Southern California Edison Company and the San Diego Gas and Electric Company, authorizing operation of the San Onofre Nuclear Generating Station, Unit 1 (San Onofre Unit 1) at steady-state reactor core power levels not in excess of 1347 megawatts (thermal), in accordance with the provisions of the license and the Technical Specifications.

San Onofre Unit 1 is a pressurized water reactor located in San Diego County, California. The San Onofre Unit 1 reactor has operated since March 27, 1967, under Provisional Operating License No. DRP–13. Facility Operating License No. DPR–13 supersedes Provisional Operating License No. DPR–13 in its entirety.

Notice of Consideration of Conversion of Provisional Operating License to Full-Term Operating License and Opportunity for Hearing was published in the **Federal Register** on December 1, 1972 (37 FR 25562). The full-term operating license was not issued previously pending completion of the reviews under the Systematic Evaluation Program (NUREG–0829, December 1986) and by the Advisory Committee on Reactor Safeguards. The Final Environmental Statement (FES) connected with the conversion to a full-term operating license was issued in October 1973. Because the FES was issued a number of years ago, the staff performed an environmental assessment to determine if an FES supplement was necessary. This assessment, dated September 16, 1991, concluded that an FES supplement was not necessary. This conclusion was noticed in the **Federal Register** on September 20, 1991 (56 FR 47816).

The application for the full-term

operating license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations in 10 CFR chapter I, as set forth in the license.

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement, since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

Facility Operating License No. DPR–13 is effective as of its date of issuance and shall expire March 2, 2004.

For further information concerning this action see: (1) The licensee's application for a full-term operating license dated July 28, 1970, (2) the Final Environmental Statement (October 1973), (3) the Commission's Environmental Assessment dated September 16, 1991, (4) Facility Operating License No. DPR–13, and (5) the Safety Evaluation Report (NUREG–1443) dated July 1991, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Main Library, University of California, Post Office Box 19557, Irvine, California 92713.

A copy of Facility Operating License No. DPR–13 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III/IV/V. Copies of the Safety Evaluation Report (NUREG–1443) may be purchased through the U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5585 Port Royal Road, room 303, Springfield, Virginia 22161. A copy is available for inspection and/or copying for a fee in the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 26th day of September 1991.

For the Nuclear Regulatory Commission.

George Kalman,

Senior Project Manager, Project Directorate V, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91–24113 Filed 10–7–91; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Cost Accounting Standards Board; Establishment of Cost Accounting Standards for Educational Institutions

ACTION: Notice.

SUMMARY: The Office of Federal Procurement Policy, Cost Accounting Standards Board (CASB), invites public comments concerning a Staff Discussion Paper on the topic of applying Cost Accounting Standards (CAS) to educational institutions.

DATES: Requests for copies of the Staff Discussion Paper, and any comments upon its contents, should be received by December 9, 1991.

ADDRESSES: Requests for a copy of the Staff Discussion Paper or comments upon its contents should be addressed to Mr. Rudolph J. Schuhbauer, Project Director, Cost Accounting Standards Board, Office of Federal Procurement Policy, 725 17th Street, NW., room 9001, Washington, DC 20503. Attn: CASB Docket No. 91–07.

FOR FURTHER INFORMATION CONTACT: Rudolph J. Schuhbauer, Project Director, Cost Accounting Standards Board (telephone 202–395–3254).

SUPPLEMENTARY INFORMATION: The Office of Federal Procurement Policy, Cost Accounting Standards Board, is releasing a Staff Discussion Paper respecting the proposed application of Cost Accounting Standards to educational institutions. Section 26(g)(1) of the Office of Federal Procurement Policy Act, 41 U.S.C. 422(g)(1), requires that the Board, prior to the promulgation of any new or revised Cost Accounting Standard, consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of Government contracts as a result of the adoption of a proposed Standard. The purpose of the Staff Discussion Paper is to solicit public views with respect to the Board's consideration of the topic of applying Cost Accounting Standards to educational institutions. The Staff Discussion Paper has not been formally approved by the Board. It reflects research accomplished to date by the staff in the respective subject area.

Background

In response to recent information that some institutions of higher education were improperly allocating indirect costs to Federal programs, the Office of Management and Budget (OMB) proceeded to amend OMB Circular A–21, Cost Principles for Educational Institutions. Those amendments were intended to halt such abuses. On May 30, 1991, OMB's Executive Associate Director informed the CASB of OMB's initiatives to revise OMB Circular A–21, and requested that the CASB work closely with OMB on the potential application of any cost accounting standards, rules or regulations to educational institutions that the CASB may deem appropriate. Subsequently, the Board instructed the CASB Staff to prepare a Staff Discussion Paper on the topic of applying CAS to educational institutions. The draft changes incorporated in the resultant Staff Discussion Paper, as further described below, are deemed compatible with OMB Circular A–21 and are now being made available for comment by interested parties.

Overall Concept

Establish CASB rules, regulations and particular Standards governing the cost accounting systems maintained by educational institutions to account for allowable contract costs. The draft CAS requirements are, to the maximum extent deemed practical, intended to be compatible with the institution's established cost accounting practices (provided that they are otherwise deemed acceptable by the Government) used for the recording of costs under Federal contracts and grants, as well as other institutional activities. Once formally established, it is expected that OMB will extend such CAS coverage to grants and other forms of financial assistance by formal revision to OMB Circular A–21. In so doing, OMB may, after determining appropriate thresholds for the application of CASB rules to grants, recommend that the CASB establish similar thresholds for contracts. Within the statutory limitations imposed by 41 U.S.C. 422(f), the CASB may then consider the establishment of contract thresholds that would permit the use of similar or joint criteria for determining what CAS coverage, if any, is to be applied uniformly to both Federal contracts and financial assistance awards placed with educational institutions. The underlying objective of this two-step approach is to improve the Federal Government's overall policies and procedures for determining and reimbursing contract and grant costs claimed by educational institutions.

Summary Description of CAS Coverage Under Consideration

The draft coverage, if adopted, would apply to any educational institution receiving a negotiated contract award in excess of $500,000. The institution would then be required to consistently follow its accounting practices when estimating (proposed costs), accumulating, reporting and allocating costs under that and any subsequent CAS-covered contract(s). Should the institution receive more than $10 million of such CAS-covered contracts in a prior fiscal year or a single $10 million dollar award, the institution would be additionally required to (1) formally disclose, in writing, its accounting practices and (2) to separately identify costs that are not reimbursable as allowable costs under the terms and conditions of Federally-sponsored agreements.

Other Related Matters

Rather than limit the Staff Discussion Paper to a general discussion on the concept of applying CAS to educational institutions, the actual regulatory amendments required to implement CAS for educational institutions were drafted. The draft regulatory provisions are presented in the Staff Discussion Paper as amendments to the basic CAS rules and regulations governing the application and administration of CAS that will be set forth in 48 CFR chapter 99. The current regulatory language, including required contract clause language, presently found at 48 CFR part 30, and 4 CFR parts 331 through 351, is in the process of being recodified at 48 CFR chapter 99, under a separate CASB Notice of Proposed Rulemaking published in the **Federal Register** 56 FR 26968 (6/12/91). In addition, the CASB has promulgated for public comments a Notice on the topic of applying CAS coverage to non-defense contracts, 56 FR 12571 (3/26/91) and a Notice on the topic of revised thresholds for applying CAS coverage and Disclosure Statement requirements, 56 FR 28780 (6/24/91). Since the CAS applicability rules, administrative requirements and basic contract clauses to be set forth in 48 CFR, Chapter 99, if modified as shown in the Staff Discussion Paper, would apply to educational institutions, familiarity with the referenced CASB documents is considered essential. Therefore, to facilitate the comment process, copies of these referenced CASB documents will be provided to interested persons that request the subject Staff Discussion Paper.

Dated: October 2, 1991.

Allan V. Burman,

Administrator for Federal Procurement Policy and Chairman, Cost Accounting Standards Board.

[FR Doc. 91-24180 Filed 10-7-91; 8:45 am]

BILLING CODE 3110-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

President's Council of Advisors on Science and Technology (PCAST); Meeting

The President's Council of Advisors on Science and Technology will meet on October 10, 1991. The meeting will begin at 9 a.m. in the Conference Room, Council on Environmental Quality, 722 Jackson Place, NW., Washington, DC. The meeting will conclude at approximately 5 p.m.

The purpose of the Council is to advise the President on matters involving science and technology.

Proposed Agenda

1. Briefing of the Council on the current activities of the Office of Science and Technology Policy and of the private sector.

2. Briefing of the Council on current federal activities and policies in science and technology.

3. Discussion of progress of working group panels.

Portions of the October 10 session will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of materials that are formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 *U.S.C. 552b(c)(1), (2), and (9)(B).*

A portion of the discussion of panel composition will necessitate discussion of information of a personal nature. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552b(C)(6).

Because of the security requirements, persons wishing to attend the open portion of the meeting should contact Ms. Ann Barnett (202) 395-4692, prior to 3 p.m. on October 9, 1991. Ms. Barnett is available to provide specific information regarding time, place, and agenda.

Dated: October 2, 1991.

Ms. Damar W. Hawkins,

Executive Assistant, Office of Science and Technology Policy.

[FR Doc. 91-24114 Filed 10-7-91; 8:45 am]

BILLING CODE 3170-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-87]

Initiation of Section 302 Investigation and Request for Public Comment on Determinations Involving Expeditious Action: Canadian Exports of Softwood Lumber

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation under section 302(b)(1)(A) of the Trade Act of 1974, as amended (19 U.S.C. 2412(b)(1)(A)); notice of determinations and expeditious action; and request for written comments.

SUMMARY: On October 4, 1991, the United States Trade Representative ("USTR") initiated an investigation under section 302(b)(1)(A) of the Trade Act of 1974, as amended ("the Trade Act"), with respect to certain acts, policies and practices of the Government of Canada affecting exports to the United States of softwood lumber. Subsequently, at the direction of the President, the USTR determined pursuant to section 304 of the Trade Act, that certain Canadian Government acts, policies and practices are unreasonable and burden or restrict United States commerce, and that expeditious action in this matter is required.

Accordingly, the USTR determined that the appropriate action at this time is to withhold or extend liquidation of entries of imports of softwood lumber products originating in certain provinces and territories of Canada, until the completion of a countervailing duty investigation of softwood lumber imports that the Department of Commerce intends to self-initiate. To that end, the USTR further determined that imports of softwood lumber products originating in certain provinces and territories of Canada will be subject to duties of up to 15 percent *ad valorem.* The imposition of such duties will be contingent upon affirmative final subsidy and injury determinations in the countervailing duty investigation, and will apply with respect to entries filed on or after October 4, 1991. The

withholding or extension of liquidation and the bonding requirements will apply to entries filed prior to the preliminary subsidy determination.

USTR invites comments from the public on the matters being investigated and on these determinations. Because expeditious action is required, the USTR has made these determinations prior to receiving public comment in accordance with section 304(b)(1).

DATES: This investigation was initiated on October 4, 1991. Written comments from the public are due on or before 12 noon, on November 7, 1991.

ADDRESS: Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Don Phillips, Assistant United States Trade Representative for Industry, (202) 395–5656; or Timothy Reif, Associate General Counsel, (202) 395–6800 (for legal issues).

SUPPLEMENTARY INFORMATION: On June 5, 1986, the Department of Commerce ("the Department") initiated a countervailing duty investigation as a result of an industry petition regarding softwood lumber products from Canada. On October 22, 1986, following a preliminary determination of injury by the U.S. International Trade Commission ("ITC"), the Department published a preliminary determination estimating that subsidies of 15 percent *ad valorem* were being provided to Canadian producers of certain softwood lumber products.

On December 30, 1986 the United States and Canada signed a Memorandum of Understanding on Trade in Softwood lumber ("MOU"). Under the MOU, the Government of Canada agreed to impose a 15 percent export charge on certain softwood lumber products; such charge could be reduced or eliminated for lumber from provinces that instituted replacement measures increasing stumpage or other charges on the harvest of timber. In return, the U.S. lumber industry withdrew its petition and the Department terminated its investigation.

On the same date, the President took action under section 301 of the Trade Act of 1974 to ensure that the objectives and commitments of the MOU were fulfilled. 52 FR 231, 233 (January 5, 1987). In particular, the President determined that the inability of the Government of Canada during an interim period following the signing of the MOU to collect export charges constituted a burden and restriction on U.S. commerce. As a result, the President proclaimed a temporary increase in rates of duty on softwood lumber products from Canada.

On September 3, 1991, the Government of Canada announced that it would terminate the MOU in 30 days. Beginning on October 4, 1991, Canada will no longer collect export charges on softwood lumber products as agreed under the MOU.

As a consequence, the United States, which in December 1986 terminated its countervailing duty investigation in reliance upon Canada's undertakings in the MOU, will be denied the offset that had been provided by Canadian export charges against possible injurious Canadian subsidies. Due to the limited notice provided by Canada in terminating the agreement and the amount of time required for the Department once again to make a preliminary subsidy determination, the Department is unable in the short period leading up to that determination to impose interim protective measures.

Accordingly, action by the United States is required during this interim period in order to restore and maintain the *status quo ante*. Since the Government of Canada has refused to collect export charges to offset possible subsidies during this period, the United States is compelled to exercise its rights and to take enforcement measures arising out of the MOU by imposing temporary measures to safeguard against an influx of possible injurious subsidized Canadian softwood lumber.

Section 302(b)(1)(A) of the Trade Act authorizes the USTR to initiate an investigation under chapter 1 of title III of the Trade Act (commonly referred to as "section 301") with respect to any matter in order to determine whether the matter is actionable under section 301. Matters actionable under section 301 include, *inter alia*, acts, policies, and practices of a foreign country that are unreasonable and burden or restrict U.S. commerce.

On October 4, 1991, the USTR, having consulted pursuant to section 302(b)(1)(B) of the Trade Act, determined that an investigation should be initiated with respect to certain acts, policies, and practices by the Government of Canada affecting exports to the United States of certain softwood lumber products.

The USTR further determined that expeditious action is required in this matter, because Canada has terminated the MOU and because consultations with the Government of Canada have failed to result in a mutually satisfactory solution. Accordingly, the USTR, at the specific direction of the President, has made the following determinations pursuant to section 304 of the Trade Act.

Determinations

(a) That acts, policies, and practices of the Government of Canada regarding the exportation of softwood lumber to the United States, specifically the failure of the Government of Canada to ensure the continued collection of export charges on softwood lumber envisioned by the MOU, are unreasonable and burden or restrict U.S. commerce; and

(b) That expeditious action is required and that the appropriate action at this time is to impose contingent, temporary increased duties on the articles identified in appendix 1 ("softwood lumber" or "such products") that originate in those provinces and territories listed in appendix 2 ("listed provinces").

In accordance with the above determinations, the following action shall be taken under section 301:

This action shall apply to all entries of softwood lumber originating in listed provinces entered from Canada on or after October 4, 1991, and before the date of the preliminary subsidy determination of the Department of Commerce.

The Secretary of the Treasury ("Secretary") shall impose bonding requirements as follows: For softwood lumber originating in the province of Quebec, a single entry bond in the amount of 6.2 percent of the entered value of entries filed before November 1, 1991, and 3.1 percent of the entered value of entries filed on or after November 1, 1991; and for such products originating in other listed provinces, except British Columbia, a single entry bond in the amount of 15 percent of the entered value.

The Secretary shall require adequate documentation of the province of origin of softwood lumber, including, at his discretion, certification by the importer of record as to province of origin of such products. If the required documentation is not provided, the entries shall be subject to a single entry bond, and potential liability, in the amount of 15 percent of the entered value.

The Secretary of Commerce shall monitor the application of replacement measures in British Columbia and Quebec. In conducting such monitoring, the Secretary of Commerce shall obtain relevant information and assistance from other federal agencies, as appropriate. If the Secretary of Commerce considers that any such replacement measures have been altered so as to reduce their effect in replacing in whole or in part the 15 percent export charge required by the MOU, he shall so advise the USTR. In

such case, the USTR will direct the Secretary of the Treasury to revise the bonding requirements or impose an increased, contingent rate of duty, not to exceed 15 percent *ad valorem*, on the entry of softwood lumber originating in the relevant province.

The Secretary of the Treasury shall withhold or extend, as appropriate, liquidation of all entries of softwood lumber from the listed provinces until the imposition of duties, if any. Imposition of a duty shall be contingent upon an affirmative final subsidy determination by the Department of Commerce and an affirmative final injury determination by the ITC in the countervailing duty investigation to be initiated by the Department. Unless the USTR has directed the Secretary to revise the bonding requirements or duty liability, the rate of duty shall be determined as follows:

(1) For softwood lumber originating in the province of Quebec, 6.2 percent *ad valorem* for entries filed before November 1, 1991, 3.1 percent *ad valorem* for entries filed on or after November 1, 1991, or, if it is lower, the rate of subsidy, if any, found in the final Department of Commerce determination;

(2) For such products originating in the province of British Columbia, zero rate of duty;

(3) For such products originating in other listed provinces, the lesser of 15 percent *ad valorem* or the rate of subsidy, if any, found in the final Department of Commerce determination;

(4) For such products for which the required origin documentation is not provided, the lesser of 15 percent *ad valorem* or the rate of subsidy, if any, found in the final Department of Commerce determination.

In the event of a negative preliminary or final injury determination, or in the event of negative final subsidy determination, no duty shall be imposed.

This determination may be amended, *inter alia*, to provide for possible adjustments to bonding requirements or duty liability applying to remanufactured products or lumber produced from U.S. origin logs.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments on the acts, policies and practices of the Government of Canada that are the subject of this investigation, on the amount of burden or restriction on U.S. commerce caused by these acts, policies and practices, and on the determinations under section 304 of the Trade Act.

Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) (55 FR 20593) and are due no later than 12 noon, November 7, 1991. Comments must be in English and provided in twenty copies to: Chairman, Section 301 Committee, Room 223, USTR 600 17th Street, NW, Washington, DC 20506.

Comments will be placed in a file (Docket 301–87) open to public inspection pursuant to 15 CFR 2006.13, except for confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. (Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the Docket which is open to public inspection.)

Joshua B. Bolten.

General Counsel.

Appendix 1

Products imported in subheadings 4407.1000 of the Harmonized Tariff Schedule (HTS) of the United States: coniferous wood sawn or chipped lengthwise, sliced or peeled, whether or not planned, sanded or finger-jointed, of a thickness exceeding 6 mm; and

Products imported in subheading 4409.1010 and 4409.1090 of the HTS; coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbitted, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed; and other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbitted, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces whether or not planed, sanded or finger-jointed; and

Products imported in subheading 4409.1020 of the HTS: coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbitted, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed.

Appendix 2

Alberta
British Columbia
Manitoba
Ontario
Quebec
Saskatchewan
Northwest Territories
Yukon Territories

[FR Doc. 91–24341 Filed 10–7–91; 8:45 am]
BILLING CODE 3190–01–M

PENSION BENEFIT GUARANTY CORPORATION

Use of Alternative Dispute Resolution

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Request for comments on proposed policy.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is developing a policy to implement an important recently enacted amendment to the Administrative Procedure Act, the Administrative Dispute Resolution Act (ADR Act). The ADR Act authorizes and encourages Federal agencies to use alternative dispute resolution (ADR) mechanisms such as negotiation, mediation, fact-finding, minitrails and arbitration to resolve disputes.

Section 3(a) of the ADR Act requires the PBGC to adopt a policy on how it will use alternate means of dispute resolution and case management in its administrative programs. The PBGC is seeking comments at this time so that the affected public may be involved at the outset in the development of procedures to expand the use of ADR by the PBGC.

DATES: Comments are due by December 9, 1991.

ADDRESSES: Send comments to Ellan H. Spring, Dispute Resolution Specialist, Pension Benefit Guaranty Corporation, 2020 K Street NW., Code 35300, Washington, DC 20006–1860.

FOR FURTHER INFORMATION CONTACT: Ellan H. Spring, Dispute Resolution Specialist, Pension Benefit Guaranty Corporation, at the address given above. Telephone 202–778–8817; TTY/TDD for the hearing-impaired, 202–778–8859. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: In response to a requirement of the Administrative Dispute Resolution Act, Public Law 101–552, the PBGC intends to develop a general policy that encourages greater use of alternative dispute resolution techniques whenever the parties involved agree to them and it is practical to do so in light of other statutory requirements.

The scope of this new statute is broad. In enacting the ADR Act, Congress expressed concern that administrative proceedings have become too formal and lengthy, and it asserted that alternative procedures may, in appropriate circumstances, be faster, less contentious, and more economical. The Congress also found that decisions made using ADR are often more creative, efficient and sensible, and that increased understanding and use of ADR procedures will enhance the operation of the Government and better serve the public.

However, all ADR techniques may not be appropriate in any given situation. The ADR Act indicates, for example, that in determining whether to use ADR, an agency and the parties should consider factors such as whether the issue(s) in dispute are precedent-setting or affect persons or organizations that are not party to the dispute, whether a formal record is essential, whether consistency among individual decisions is critical, and whether they have bearing on significant policy questions. These factors may affect the choice of a particular ADR technique in dealing with the issue in dispute.

Within such limitations, the PBGC plans to explore the various possibilities for use of ADR techniques, including whether any of its current procedures and rules need to be modified to allow for greater use of ADR. A full survey of existing PBGC dispute resolution practices is planned. This survey will encompass all formal and informal adjudications, rulemaking, enforcement actions, litigation and other types of disputes in which the PBGC may be involved.

The PBGC will develop its ADR policy in full consultation with the Administrative Conference of the United States and the Federal Mediation and Conciliation Service, as required by section 3(a) of the ADR Act. To this end, the PBGC has already designated an agency Dispute Resolution Specialist to serve as liaison with those agencies and as coordinator of the PBGC's ADR activities.

Commenters are encouraged to provide specific comments that relate to the current or potential use of ADR techniques in the activities of the PBGC. We particularly request comments on any experience to date with ADR activities of the PBGC, areas of the PBGC's operations that might readily benefit from the use of such techniques, areas in which such techniques should be limited or not used at all, or any other matter which the commenter believes would be of interest to the PBGC as it develops its policy in these areas.

Issued in Washington DC this 1st day of October 1991.

James B. Lockhart III.

Executive Director.

[FR Doc. 91-24106 Filed 10-7-91; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29753; International Series No. 318; File No. SR-AMEX-91-20]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Warrants on a Basket of Ten Foreign Currencies

September 27, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 12, 1991, the American Stock Exchange, Inc. ("AMEX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to approve for listing and trading under section 106 of the Amex Company Guide warrants based on a basket of ten major foreign currencies. In accordance with the requirements set forth in Securities Exchange Act Release No. 26152 (October 3, 1988) 53 FR 39832 (October 12, 1988) ("Generic Foreign Currency and Index Warrant Approval Order"), the Amex has submitted this filing pursuant to rule 19b-4 under the Act to obtain Commission approval to list these warrants.

The text of the proposed rule change is available at the Office of the Secretary, AMEX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange is proposing to list under Section 106 (Currency and Index Warrants) of the Amex Company Guide warrants on a basket of ten major foreign currencies, which are identical to, and weighted in accordance, with the U.S. dollar index established and published by the Federal Reserve Board ("Fed").[1] The value of such basket can be expected to fluctuate along with changes in the rate of exchange between the U.S. dollar and the individual currencies included in such basket, as reflected in the U.S. Dollar Index ("USDX") of the FINEX Division of the New York Cotton Exchange ("NYCE").[2]

The specific currencies and weightings thereof are also utilized by the FINEX Division of the NYCE in connection with the USDX. Such currencies and weightings will be as follows (with the country and the weight of the individual currency in the basket included in parentheses): (1) Mark (Germany, 20.8 percent); (2) Yen (Japan, 13.6 percent); (3) Franc (France, 13.1 percent); (4) Pound (U.K., 11.9 percent); (5) Dollar (Canada, 9.1 percent); (6) Lira (Italy, 9 percent); (7) Guilder (Netherlands, 8.3 percent); (8) Franc (Belgium, 6.4 percent); (9) Krona (Sweden, 4.2 percent); and (10) Franc (Switzerland, 3.6 percent).

In approving the Generic Foreign Currency and Index Warrant Approval Order, the Commission expressed interest in the impact of additional foreign currency and index products on U.S. markets, and stated that the Amex would be required to submit for Commission approval any new types of index warrants that it proposed to trade. The Amex is now proposing to list warrants based on a basket of ten major foreign currencies.

[1] The U.S. dollar index calculated by the Fed is based on the change in exchange rates relative to a specified March 1973 base period. The value of these changes is weighted based on each index component country's share of multilateral world trade (also as of March 1973) and then averaged.

[2] Futures contracts based on USDX, as well as options on USDX futures, are currently traded on the FINEX Division of the NYCE.

Such warrant issues will conform to the listing guidelines under Section 106 of the Amex Company Guide, which provide that (1) the issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the size and earnings requirements in Section 101(a) of the Company Guide; (2) the term of the warrants shall be for a period ranging from one to five years from the date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants, together with a minimum of 400 public holders, and an aggregate market value of $4,000,000.

The warrants will be direct obligations of their issuer, requiring delivery to the holder upon exercise (subject to certain minimum exercise requirements) of the foreign currencies comprising the basket in proportion to the weight of such foreign currency components, in accordance with the terms of the warrant offering. Alternatively, the holder, upon exercise, may elect to receive the cash difference between a pre-stated value at the time of issuance and the value of the basket of currencies at the time of exercise. The warrants will be either exercisable throughout their life (*i.e.*, American style), or exercisable only on their expiration date (*i.e.*, European style). Section 106(d) of the Amex Company Guide is proposed to be amended to accommodate a physical delivery alternative with respect to the exercise of these currency warrants.

The Amex has adopted suitability standards applicable to recommendations to customers regarding currency warrants. Exchange Rule 411, Commentary .01 provides that the Exchange recommends that currency warrants be sold only to options-approved accounts. If a member or member organization effects a transaction in warrants for a customer whose account has not been approved for options trading, such member or member organization should make a careful determination that such warrants are suitable for such customer. In addition, the AMEX, prior to the commencement of trading, will distribute a circular to its membership calling attention to the specific risks associated with the warrants.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act, and, in particular, section 6(b)(5), as the warrants are designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 29, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-24125 Filed 10-7-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29769; file No. SR-MSE-91-13]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Midwest Stock Exchange, Inc. Relating to Amendments to its Membership Dues and Fees

September 30, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 12, 1991, the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSE proposes to amend the Transaction Fee Schedule of its Membership Dues and Fees by adding an additional volume credit that will be applied against the net transaction fees for electronic agency round-lot market orders executed on the MSE.[1] The Exchange will make the amended fee schedule effective upon submission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below.

[1] The proposal provides for the amount of the credit to be determined by the monthly transaction volume generated: a credit of $.50 per trade will be applied if 10,000—49,999 trades per month are executed and a $1.00 credit per trade if 50,000 or more trades per month are executed. The MSE proposes that this new credit be added to part (1), Credits and Discounts, of its Transaction Fee Schedule.

The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange is proposing the additional volume credit as a competitive measure in order to attract additional order flow to its trading floor.

The proposed rule change is consistent with section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among the MSE's members, issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that no burdens will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to file No. SR–MSE–91–13 and should be submitted by October 29, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–24126 Filed 10–7–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–29761; File No. SR–NYSE–91–34]

Self-Regulatory Organizations; Notice of Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Handling of Market-on-Close Orders

September 30, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 19, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change extends a pilot program amending Exchange procedures for handling market-on-close ("MOC") orders.[1] The Exchange is also requesting that a concurrent extension be granted regarding an exemption from the Commission's short sale rule, Rule 10a–1 under the Act,[2] for an MOC sell order when the order is entered with an off-setting MOC buy order and is part of a program trading strategy.[3] In another filing the Exchange has requested permanent approval of certain of these procedures.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange first proposed to amend its rules governing MOC orders in File No. SR–NYSE–89–10 which was filed with the Commission on June 1, 1989 ("June filing").[5] The proposed rule change modified the Exchange's procedures for handling and executing MOC orders to provide (1) that such orders are to be executed in their entirety at the closing price on the Exchange and, if not so executed, are to be cancelled; and (2) for the entry, and execution, of matched MOC orders.

The Commission temporarily approved the June filing for a one year pilot period.[6] The Exchange subsequently received Commission approval to extend the pilot to September 30, 1991.[7] In a separate filing,[8] the Exchange has requested permanent approval for the procedures relating to execution of MOC orders at the closing price and approval for the matched MOC procedures portion of the pilot to run concurrently with the pilot

[1] See Securities Exchange Act Release No. 28167 (June 29, 1990), 55 FR 28117 (order granting temporary approval to File No. SR–NYSE–89–10).

[2] 17 CFR 240.10a–1 (1990).

[3] See note 10 and accompanying text. *infra.*

[4] See File No. SR–NYSE–91–35 submitted to the Commission on September 19, 1991. In File No. SR–NYSE–91–35, the Exchange has requested permanent approval of the portion of the proposal relating to the execution of a MOC order in its entirety at the closing price. With regard to the matched MOC orders, the Exchange has requested an extension of the current pilot program to run concurrently with the pilot program for the Exchange's off-hours trading sessions, which is due to expire in May, 1993 (*see* Securities Exchange Act Release No. 29237 (May 24, 1991), 56 FR 24853 (order approving File Nos. SR–NYSE–90–52 and SR–NYSE–90–53)).

[5] See note 1, *supra.*

[6] See note 1, *supra.*

[7] See Securities Exchange Act Release No. 29393 (July 1, 1991), 56 FR 30954 (order granting temporary accelerated approval to File No. SR–NYSE–91–22).

[8] See note 4, *supra.*

program for the Exchange's off-hours trading sessions.[9] The purpose of this proposed rule change is to request an extension of the entire pilot program, scheduled to terminate on September 30, 1991, until the earlier of November 30, 1991 or the date when the Commission makes a decision with respect to the Exchange's request for permanent approval of certain procedures in this pilot program. The Exchange has submitted to the Commission a report assessing the effectiveness of the proposed procedures. In the report, the Exchange noted that the guaranteed closing price and specified pricing procedures appeared to be working well in meeting the needs of investors, with no adverse impact on the quality of the Exchange's market.

As indicated in Item I above, the Exchange also is requesting an extension of the no-action position taken by the Division of Market Regulation at the time of the approval of the proposed rule amendments in File No. SR–NYSE–89–10.[10] The Exchange continues to believe, as outlined in SR–NYSE–89–10, that the execution of a MOC order to sell short does not offer an opportunity for price manipulation when that order is both entered and executed against an offsetting MOC buy order and is part of a program trading strategy.

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–91–34 and should be submitted by October 29, 1991.

IV. Commission Findings and Order Granting Temporary Accelerated Approval

After careful review, the Commission finds that the NYSE proposal to extend the effectiveness of the pilot program regarding MOC orders until November 30, 1991 [11] is consistent with section 6(b) of the Act.[12] In particular, for the reasons set forth below, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In the order originally approving the MOC procedures for a one-year pilot period, the Commission directed the NYSE to submit a report evaluating the effects of the MOC procedures over the pilot period. Because the NYSE was unable to submit the required report prior to the expiration of the original pilot program on May 30, 1991, the Commission granted an extension of the pilot until September 30, 1991. In deciding to approve the extension only until September 30, 1991, the Commission relied on the fact that the Exchange was to submit the report no later than July 8, 1991, thereby providing sufficient time for the Commission to review and analyze the Exchange's findings.

In light of the fact that the Exchange took much longer than anticipated to file the report, which it did on September 11, 1991, the Commission has not had the necessary time to assess the NYSE's findings. In addition, as noted above, the Exchange has submitted a concurrent proposed rule change seeking permanent approval of certain portions of the pilot program, as well as an extension of the portion of the pilot concerning matched MOC orders to run concurrently with the off-hours trading pilot. Thus, the Commission believes that a two-month extension of the proposal is appropriate in order to provide the Commission with additional time to review the submitted data regarding the MOC procedures. After reviewing such data, the Commission should be able to make a decision with regard to the NYSE's proposal requesting permanent approval of certain portions of the MOC procedures, as well as the extension of the pilot respecting matched MOC orders.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after

[9] See Securities Exchange Act Release No. 29237 (note 4, *supra*) for a description of the Exchange's off-hours trading proposal.

[10] See letter from Richard G. Ketchum, Director, Division of Market Regulation, SEC, to James E. Buck, Senior Vice President and Secretary, NYSE, dated July 2, 1990.

[11] As previously noted, the Commission granted a limited exemption from Rule 10a–1 for a MOC order entered as part of a paired MOC order (see note 10, *supra* and note 6 in Securities Exchange Act Release No. 29393 (July 1, 1991), 56 FR 30954). The effectiveness of this exemption terminates on September 30, 1991, concurrent with the expiration of the MOC pilot period. Pursuant to this order, the Commission is granting, until November 30, 1991, an extension of the relief from Rule 10a–1 regarding a MOC order to sell short that is entered by a member firm where (1) the member firm also has entered a MOC order to buy the same amount of stock, and (2) the MOC order is part of a program trading strategy by the member firm, and the orders are identified as such. As indicated in the order approving the MOC procedures for a one year pilot period (*see* note 1, *supra*), the Commission believes that matched MOC orders that are part of a program trading strategy do not raise the same concerns that are applicable to transactions in individual stocks, and that it is appropriate to exempt such transactions from the operation of the short sale rule.

[12] 15 U.S.C. 78f(b) (1988).

publication of the proposed rule change in the **Federal Register**. Accelerated approval enables the Exchange to continue, on an uninterrupted basis, the procedures currently used for handling and executing MOC orders. The additional two-month continuation of the pilot program should allow the Commission sufficient time to review the Exchange's report and determine whether approval of the procedures on a permanent and/or temporary basis is consistent with the Act. Furthermore, the Commission solicited comment on both the NYSE's original MOC proposal as well as the extension of the MOC pilot program until September 30, 1991. The Commission received no comments on either proposal.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change and the limited exemption from rule 10a–1 for a MOC order entered as part of a paired MOC order are approved for the pilot period ending November 30, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jonathan G. Katz,

Secretary.

[FR Doc. 91–24124 Filed 10–7–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–18323A; International Series Release No. 316A; 812–7753]

The Emerging Germany Fund Inc. et al.; Correction to Notice

October 1, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: This is to correct an erroneous date contained in a notice issued September 18, 1991 on an application seeking an exemption under section 6(c) of the Investment Company Act of 1940 from the provisions of section 15(a) of such Act (Investment Company Act Release No. 18323; International Series Release No. 316). The requested relief would permit the investment advisers to The Emerging Germany Fund Inc. to continue to provide investment advisory services to such Fund on a conditional temporary basis. The second condition in the notice provided that any order granting the requested relief would terminate on the earlier of January 31, 1991, or the date of shareholder approval of the investment advisory contracts of The Emerging Germany Fund Inc. This condition should have stated that any exemptive relief granted on the application would terminate on the earlier of January 31, 1992 (rather than January 31, 1991), or the date of such shareholder approval.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–24129 Filed 10–7–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC—18340; 811–3994]

Federated Corporate Cash Trust; Notice of Application

October 1, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Act of 1940 ("1940 Act").

APPLICANT: Federated Corporate Cash Trust.

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was initially filed on October 26, 1990. Amendments to the application were filed on February 22 and June 7, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 25, 1991, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, Sec, 450 5th Street NW., Washington, DC 20549. Applicant, Federated Investors Tower, Pittsburgh, PA 15222–3779.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, an open-end diversified management investment company organized as a Massachusetts business trust, filed a registration statement under section 8(b) of the 1940 Act on March 23, 1984. Applicant's registration statement became effective on June 26, 1984, and the initial public offering of Applicant's shares commenced on the same date.

2. At a meeting on January 31, 1990, Applicant's board of trustees voted to recommend to shareholders the approval of an Agreement and Plan of Reorganization (the "Plan"). The Plan provided that Fortress Utility Fund, Inc. (the "Plan"). The Plan provided that Fortress Utility Funds, Inc. ("FUFI"), an open-end diversified management company, would acquire all of Applicant's assets in exchange for FUFI shares to be distributed pro rata by Applicant to its shareholders in complete liquidation and termination of the Applicant. FUFI also entered into an agreement under which Federal Management, the investment adviser for both FUFI and the Applicant, would reimburse all expenses incurred in connection with the Plan.

3. Applicant's shareholders approved the Plan at a special meeting of shareholders held on June 14, 1990. On the same date, FUFI acquired all of the assets of the Applicant in exchange for its shares. Each shareholder of the Applicant received shares of FUFI having a total net asset value equal to the total net asset value of his or her holdings in the Applicant.

4. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–24128 Filed 10–7–91; 8:45 am]

BILLING CODE 8010–01–M

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[13] 15 U.S.C. 78s(b)(2) (1988).

[14] 17 CFR 200.30–3(a)(12) (1990).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice and Receipt of Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps (for years 1990 and 1995) submitted by Portland International Airport (PDX) under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing proposed noise compatibility program that was submitted for Portland International Airport under Part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before March 13, 1992.

EFFECTIVE DATE: The effective date of the FAA's determination on the Portland International Airport 1990 and 1995 noise exposure maps and the start of its review of the associated noise compatibility program is September 16, 1991. The public comment period ends November 14, 1991.

FOR FURTHER INFORMATION CONTACT: Dennis Ossenkop, FAA, Airports Division, ANM–611, 1601 Lind Ave., SW., Renton, Washington 98056–4056. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the 1990 and 1995 noise exposure maps for Portland International Airport are in compliance with applicable requirements of part 150, effective September 16, 1991. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before March 13, 1992. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (herein after referred to as "the Act"), an airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depicts noncompatible land uses as of the date of submission of such map, a description of projected aircraft operations, and the ways in which such operations will affect such map. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted a noise exposure map that has been found by FAA to be in compliance with the requirements of Federal Aviation Regulation (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Director of Aviation for Portland International Airport submitted to the FAA noise exposure maps, descriptions and other documentation which were produced during an airport Noise Compatibility Study. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by PDX. The specific maps under consideration are Exhibits J and M in the December 1990 PDX Noise Abatement Plan. The FAA has determined that these maps for Portland International Airport are in compliance with applicable requirements. This determination is effective on September 16, 1991. FAA's determination on an airport operator's noise exposure maps is limited to the determination that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on noise exposure maps submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable for the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of the FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for PDX, also effective on September 16, 1991. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before March 13, 1992.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to the local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Independence Avenue, SW., room 615, Washington, DC.

Federal Aviation Administration, Airports Division, ANM–600, 1601 Lind Ave., SW., Renton, Washington 98056–4056.

Portland International Airport, Portland, Oregon.

Questions may be directed to the individual named above under the

heading, FOR FURTHER INFORMATION CONTACT. Issued in Seattle, Washington, September 16, 1991.

Edward G. Tatum,

Manager, Airports Division, ANM-600, Northwest Mountain Region.

[FR Doc. 91-24165 Filed 10-7-91; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-91-36]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received,and corrections. The purposes of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before October 28, 1991.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. ____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington DC, on October 2, 1991.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 25559.

Petitioner: Aerospace Industries Association of America, Inc.

Sections of the FAR Affected: 14 CFR parts 121, 127, 135, and SFAR 38-4.

Description of Relief Sought: To extend Exemption No. 4913A which allows manufacturers of aircraft intended for operation under FAR parts 121, 127, or in commuter air carrier operation (as defined in part 135 or Special Federal Aviation Regulations 38-4) and that are maintained under a Federal Aviation Administration (FAA) approved continuous airworthiness maintenance program, relief from installation of identification plates on the exterior of the aircraft during the production phase. This exemption would include aircraft manufactured for export and would include all activities until the title is transferred.

Docket No.: 26329.

Petitioner: Braniff International Airlines, Inc.

Sections of the FAR Affected: 14 CFR part 121, appendix H.

Description of Relief Sought: To allow Braniff International Airlines, Inc., instructors and check airmen not to be employed by the certificate holder for at least one year in that capacity or as a pilot-in-command or second-in-command in an airplane of the group in which that pilot is instructing or checking.

Docket No.: 26520.

Petitioner: Ground Air Transfer, Inc., dba Charter One.

Sections of the FAR Affected: 14 CFR 121.356.

Description of Relief Sought: To permit Charter One's two Convair 580 passenger aircraft to be exempt from meeting Federal Aviation Administration (FAA) requirements for installation of TCAS-II.

Docket No.: 26595.

Petitioner: Volvo Aero Support AB.

Sections of the FAR Affected: 14 CFR 145.71.

Description of Relief Sought: To enable Volve Aero Support AB to perform engine test and repair of engine parts on GE CT-7 engines of N-registered SAAB 340 aircraft operating within and outside the United States.

Docket No.: 26621.

Petitioner: BAC 1-11 Corporation.

Sections of the FAR Affected: 14 CFR 125.225(a) and 91.609(a).

Description of Relief Sought: To allow the BAC 1-11 Corporation to delay installation of an 11-parameter flight data recorder that meets the technical requirements of part 125, appendix D by May 11, 1993, rather than by the October 11, 1991, compliance date.

Dispositions of Petitions

Docket No.: 26101

Petitioner: America West Airlines, Inc.

Sections of the FAR Affected: 14 CFR 93.123(a).

Description of Relief Sought/ Disposition: To extend Exemption No. 5133A which authorizes America West Airlines, Inc. to operate four special slots at Washington National Airport which were formerly operated by Braniff Airlines under Federal Aviation Administration Exemption No. 3927 until July 15, 1991.

Grant, July 15, 1991, Exemption No 5133B

Docket No.: 26630

Petitioner: Erickson Air-Crane (Canada).

Sections of the FAR Affected: 14 CFR 133.1 (a) and (b), 133.11, 133.19, 133.51.

Description of Relief Sought/ Disposition: To permit Erickson Air-Crane (Canada) to perform certain rotorcraft external-load operations (i.e., logging and fire-fighting) in the United States using Canadian registered S-64 Sikorsky helicopter.

Grant, August 30, 1991, Exemption No. 5339

[FR Doc. 91-24167 Filed 10-7-91; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. 90-01-VE-N04]

Proposed Amendment of Final Determination That Certain Nonconforming Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Proposed amendment of final determination that certain nonconforming vehicles are eligible for importation.

SUMMARY: This notice announces a proposed amendment of a final determination by the National Highway Traffic Safety Administration (NHTSA)

that certain Canadian motor vehicles certified as complying with the Canadian Motor Vehicle Safety Standards, but which are not certified as complying with the U.S. Federal motor vehicle safety standards are nevertheless eligible for importation into the United States because the safety features of the vehicle comply with or are capable of being modified to comply with all applicable Federal motor vehicle safety standards. The proposed amendment affects multipurpose passenger vehicles, trucks, and buses manufactured in Canada on or after September 1, 1991, and before September 1, 1993, which have been manufactured by their original manufacturer to comply with U.S. Federal motor vehicle safety standards on head restraints and occupant protection, and for the same vehicle types manufactured on or after September 1, 1993, which have been manufactured by their original manufacturers to comply with U.S. Federal motor vehicle safety standards on roof crush resistance, head restraints and occupant protection.

DATES: Comments are due on the proposed amended determination on November 7, 1991. The modified determination will be effective upon publication in the **Federal Register**.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours are from 9:30 a.m. to 4 p.m.).

FOR FURTHER INFORMATION CONTACT: George Shifflett, Office of Vehicle Safety Compliance, NHTSA (202–366–5307).

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1990, NHTSA published a final determination in the **Federal Register** concerning the importation of motor vehicles into the United States originally manufactured to comply with the Canadian Motor Vehicle Safety Standards (CMVSS) rather than the U.S. Federal Motor Vehicle Safety Standards (FMVSS) (55 FR 32988).

This determination applied to motor vehicles that are:

(1) Substantially similar to motor vehicles which were originally manufactured to conform to the Federal standards and to be imported into and sold in the United States, and

(2) Capable of being readily modified to conform to all applicable Federal motor vehicle safety standards. With respect to vehicles other than passenger cars, the determination covered:

"(a)11 other types of motor vehicles manufactured from January 1, 1968 on, which are certified by their original manufacturer as complying with all applicable Canadian motor vehicle safety standards, and which are of the same make, model, and model year of any * * * multipurpose passenger vehicle, truck, bus, * * * that was originally manufactured for importation into and sale in the United States, or originally manufactured in the United States for sale there * * *." (at 32990).

The basis of the determination was the near identicality of the CMVSS to the FMVSS. However, the notice recognized a divergence in FMVSS No. 208 which requires automatic restraints for passenger cars manufactured on or after September 1, 1989, and CMVSS No. 208 which contains no similar requirement. Accordingly, the determination applied to passenger cars of post-August 1989 Canadian manufacture only if they are equipped with an automatic restraint system by their original manufacturer which complies with FMVSS No. 208.

There will be significant changes to FMVSS 208 Occupant Crash Protection and FMVSS 202 Head Restraints, that affect vehicles other than passenger cars beginning with the 1992 model year, and to FMVSS 216 Roof Crush Resistance, that affect these same vehicles beginning with the 1994 model year, and that are not required by the respective CMVSS. With respect to FMVSS 208, multipurpose passenger vehicles (MPVs) and trucks with a GVWR of 8,500 pounds or less having an unloaded vehicle weight of 5,500 pounds or less, must comply with the frontal crash test requirements using either "active belts or passive restraints". Further MPVs (except for motor homes), trucks and buses (except school buses) with a GVWR of 10,000 pounds or less, must be equipped with rear seat lap/shoulder belts at the outboard seating positions. Light truck manufacturers are required to begin phasing in automatic crash protection beginning September 1, 1994, and to apply it to 100% of production on September 1, 1997. As for FMVSS 202, MPVs, trucks, and buses with a GVWR of 10,000 pounds or less, must comply with head restraint requirements. Finally, multipurpose passenger vehicles, trucks, and buses whose GVWR is less than 6,000 pounds manufactured on and after September 1, 1993, must comply with roof crush resistance requirements. These requirements of FMVSS 202, 208, and 216 have not been added to the Canadian standards. Whether Canadian vehicles not manufactured to conform to Standard No. 202 would be "capable of being readily modified" to meet requirements that become effective September 1, 1991, would depend on the seat back design, and on the relationship to the seat of other regulated features (seat anchorages, seat belts, and seat belt anchorages). Some vehicles might not be capable of being readily modified. NHTSA does not believe that it would be feasible for such vehicles to be considered as "capable of being readily modified" to comply with the FMVSS 202 and 208 (frontal crash test) requirements that become effective September 1, 1991, the FMVSS 216 requirements that become effective September 1, 1993, and the additional FMVSS 208 (automatic protection) requirements that begin phasing-in September 1, 1994.

Tentative Amended Determinations

Accordingly, in consideration of the above, the agency has tentatively determined to amend its determination of August 13, 1990, covering all multipurpose passenger vehicles, trucks, and buses "manufactured from January 1, 1968 on". The amended determination would cover:

(a) All multipurpose passenger vehicles, trucks, and buses manufactured on and after January 1, 1968 and before September 1, 1991;

(b) All multipurpose passenger vehicles, trucks and buses manufactured on or after September 1, 1991, and before September 1, 1993, by their original manufacturer to comply with the requirements of U.S. FMVSS 202 and 208 to which they would have been subject had they been manufactured for sale in the United States; and

(c) All multipurpose passenger vehicles, trucks and buses manufactured on or after September 1, 1993, by their original manufacturer to comply with the requirements of U.S. FMVSS 202, 208 and 216 to which they would have been subject had they been manufactured for sale in the United States.

Comments

Interested person are invited to submit comments on the amendment proposed above. It is requested, but not required, that five copies be submitted.

All comments received before the close of business on the comment date indicated below will be considered, and will be available for examination in the docket at the address noted above both before and after the date. Comments received after the closing date will be considered to the extent practicable. Notice of adoption of the amended determination will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(II) and (C)(iii); 49 CFR 593.8, delegation of authority at 49 CFR 1.50.

Issued on October 3, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-24184 Filed 10-7-91; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 90-02-VE-NO2]

Final Determination That Certain Nonconforming Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Final determination that certain nonconforming vehicles are eligible for importation.

SUMMARY: This notice announces final determinations by the National Highway Traffic Safety Administration (NHTSA) that certain Canadian motor vehicles certified as complying with the Canadian Motor Vehicle Safety Standards, but which are not certified as complying with the Federal motor vehicle safety standards, are nevertheless eligible for importation into the United States because the safety features of the vehicle comply with or are capable of being modified to comply with all applicable Federal motor vehicle safety standards.

DATES: The final determinations are effective upon publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: George Shifflett, Office of Vehicle Safety Compliance, NHTSA (202-366-5307).

SUPPLEMENTARY INFORMATION:

Background

On January 18, 1991, NHTSA published in the **Federal Register** tentative determinations that certain nonconforming vehicles were eligible for importation into the United States, and afforded the public an opportunity to comment (56 FR 2063).

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) (the Act), a motor vehicle that was not originally manufactured and certified to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has made one of the following determinations, either pursuant to a petition or on its own initiative—

(1) That the motor vehicle:

Is substantially similar to a motor vehicle originally manufactured for importation and sale into the United States, certified under section 114 (of the Act), and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to applicable Federal motor vehicle safety standards.

(section 108 (c)(3)(A)(i)(I), determinations under this provision are referred to in this notice as Category I determinations) or

(2) "where there is no substantially similar United States motor vehicle," that the:

Safety features of the motor vehicle comply with or are capable of being modified to comply with all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as the Secretary determines to be adequate * * *

(section 108 (c)(3)(A)(i)(II), determinations under this provision are referred to in this notice as Category II determinations)

On August 13, 1990, NHTSA published a notice in the **Federal Register** at 55 FR 32988 making final Category I determinations that certain motor vehicles that are certified as conforming to the Canadian motor vehicle safety standards (referred to in this notice as CMVSS) but which are not certified as conforming to the U.S. Federal motor vehicle safety standards (referred to in this notice as FMVSS) were eligible for importation. While this determination covered most vehicles manufactured for sale in Canada since January 1, 1968, it did not extend to vehicles that may have been made for the Canadian market, with no counterpart sold in the United States. Examples are specialized vehicles of low production, such as horse trailers, or passenger cars such as the Hyundai Pony and Stellar.

As NHTSA has previously noted, in most essential respects, the CMVSS's are identical to the FMVSS's. To be sure, there are certain differences. CMVSS No. 208, Seat Belt Installation, unlike FMVSS No. 208, Occupant Crash Protection, does not require installation of automatic restraints for passenger cars manufactured on and after September 1, 1989. Three further examples will suffice. Under CMVSS No. 101, Control and Displays, speedometers/odometers must be marked in kilometers, while those complying with FMVSS No. 101, Control and Displays, need only to be marked in miles per hour. Headlamps meeting ECE requirements are permissible under CMVSS No. 108, Lamps, Reflective Devices and Associated Equipment, but they are not permissible under FMVSS No. 108. CMVSS No. 121, Air Brake Systems, unlike FMVSS No. 121, does not require brakes on all axles.

With respect to eligibility for a Category II determination, where a vehicle certified to the CMVSS already conforms to a FMVSS, the question of this capability of modification is not reached. Further, because of the near identicality of the CMVSS and FMVSS (other than the automatic restraint requirements that became effective for all passenger cars effective September 1, 1989, and the dynamic side impact requirements that will become effective for all passenger cars effective September 1, 1996), it appears that such modifications as may be required are comparatively minor in nature, and hence such vehicles are capable of being modified to comply with all applicable FMVSS. Thus, adequate evidence existed to support a tentative conclusion by NHTSA that Canadian vehicles that were not eligible for a Category I determination and were not covered by its previous final Category I determination, were suitable for a Category II determination. Accordingly, NHTSA published tentative determinations that these vehicles were eligible for importation.

Comment on the Tentative Determinations

One comment was received in response to the notice of tentative determinations. Ford Motor Company supported NHTSA but noted that there will be "significant changes to FMVSS 208 Occupant Crash Protection and FMVSS 202 Head Restraints", that affect vehicles other than passenger cars beginning with the 1992 model year, and that are not required by the respective CMVSS. Specifically, multipurpose passenger vehicles (MPVs) and trucks with a GVWR of 8,500 pounds or less having an unloaded vehicle weight of 5,500 pounds or less, must comply with the frontal crash test requirements using either "active belts or passive restraints." Further, MPVs (except for motor homes), trucks and buses (except school buses) with GVWR of 10,000 pounds or less, must be equipped with rear seat lap/shoulder belts at the outboard seating positions. Finally, MPVs, trucks, and buses with a CVWR of 10,000 pounds or less, must comply with head restraint requirements. These requirements have not been added to the Canadian standards, and Ford doubts whether it would be feasible for "such vehicles to be considered as 'capable of being modified' to comply with the requirements of the 1992 level FMVSS 208 and 202." It also suggests that these determinations should be reconsidered "as and when the agency promulgates roof crush, passive restraint

and side impact requirements for these light truck type vehicles * * *."

The agency concurs with this comment, and is making an appropriate limitation in its final determination. It will also consider further limitations based upon future standards, both American and Canadian.

This will require a modification of the agency's previous determination of eligibility concerning Category I Canadian trucks, buses, and MPVs, and the agency is publishing an appropriate companion notice.

Final Determinations

Accordingly, in consideration of the above, with respect to

(a) All passenger cars manufactured on and after January 1, 1968, and before September 1, 1989.

(b) All passenger cars manufactured on and after September 1, 1989, and before September 1, 1996, which are equipped with an automatic restraint system that complies with FMVSS No. 208.

(c) All multipurpose passenger vehicles, trucks, and buses manufactured between January 1, 1968, and September 1, 1991.

(d) All multipurpose passenger vehicles, trucks, and buses manufactured on and after September 1, 1991, by their original manufacturer to comply with the requirements of FMVSS No. 202 and 208 to which they would have been subject had they been manufactured for sale in the United States, and

(e) All trailers and motorcycles manufactured on and after January 1, 1968, and for which there is no substantially similar United States motor vehicle, but which are certified by their original manufacturer as complying with all applicable Canadian motor vehicle safety standards.

The National Highway Traffic Safety Administration hereby determines that the safety features of such motor vehicles comply with or are capable of being modified to comply with all applicable U.S. Federal motor vehicle safety standards.

Fee

Section 108(c)(3)(A)(iii) requires registered importers to pay such fees as NHTSA reasonably establishes to cover its cost in making determinations under subsection (i)(1) on its own initiative that motor vehicles are eligible for importation. In implementation of this requirement, for Fiscal Year 1991, NHTSA has specified (55 FR 40664, October 4, 1990) that such fee is payable on behalf of every person importing a vehicle covered by a determination on the Administrator's initiative, and that the fee is $156. Thus, a fee of $156 must be submitted to the agency for any vehicle imported pursuant to a final determination made under this notice.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(II) and (C)(iii); 49 CFR 593.8; delegation of authority at 49 CFR 1.50.

Issued on October 3, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-24185 Filed 10-7-91; 8:45 am]

BILLING CODE 4910-59-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. In accordance with 40 U.S.C. 486(c) and Executive Order 12352, dated March 17, 1982, USIA is requesting approval for a three-year extension to an information collection entitled "Information Collection in Support of USIA Acquisition Process" under OMB Control Number 3116-0185. Estimated burden hours per response is 256 hours. Respondents will be required to respond only one time.

DATES: November 7, 1991.

COPIES: Copies of the Request for Clearance (SF-83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Office for USIA; and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Debbie Knox, United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 619-5503; and OMB review: Mr. C. Marshall Mills, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, telephone (202) 395-7340.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information (Paper Work Reduction Project: OMB No. 3116-0185) is estimated to average 256 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the United States Information Agency, M/ASP, 301 Fourth Street SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Information Collection in Support of USIA Acquisition Process.

Form Number: None.

Abstract: Information collection from the public is necessary to evaluate bids and responses from potential suppliers for supplies, services and hardware for the purpose of making awards in conformance with rules and regulations governing procurement by federal government departments and agencies.

Proposed Frequency of Responses: No. of respondents—1,200; Recordkeeping Hours—240; Total Annual Burden—307,200.

Dated: October 3, 1991.

Rose Royal,

Federal Register Liaison.

[FR Doc. 91-24212 Filed 10-7-91; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or

asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before November 7, 1996.

Dated: September 30, 1991.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Application for Reinstatement (Insurance Lapsed More than 6 Months), VA Form 29–352.
2. This form is used by veterans to apply for reinstatement of their Government Life Insurance or Total Disability Income Provision which has lapsed for more than six months.
3. Individuals or households.
4. 1,213 hours.
5. 30 minutes.
6. On occasion.
7. 2,426 respondents.

[FR Doc. 91–24156 Filed 10–7–91; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before November 7, 1991.

Dated: September 30, 1991.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. VA Request for Determination of Reasonable Value/HUD Application for Property Appraisal and Commitment, VA Form 26–1805/HUD Form 92800–1
2. This form provides information to permit the assignment of appraisals and inspections of properties in order to determine the reasonable value of properties proposed as security for guaranteed or direct home loans and to require minimum property standards.
3. Individuals or households
4. 80,000 hours
5. 12 minutes
6. On occasion
7. 400,000 responses.

[FR Doc. 91–24157 Filed 10–7–91; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 195
Tuesday, October 8, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on October 10, 1991, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

Closed Session*

A. New Business

1. Enforcement Actions.

*Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

Dated: October 3, 1991.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 91–24290 Filed 10–4–91; 11:23 am]

BILLING CODE 6705–01–M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 9:00 a.m. Tuesday, October 15, 1991.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, DC 20006.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

PORTIONS OPEN TO THE PUBLIC: The Board will consider the following:

1. Monthly Reports
   A. Approval of the September Board Minutes
   B. District Bank Directorate
   C. Housing Finance Directorate
2. Director Eligibility Regulations

PORTIONS CLOSED TO THE PUBLIC: The Board will consider the following:

1. Office of Finance Update
2. Legislative/Strategic Discussion
3. FHLBank Presidents' Compensation Update
4. Dividend Policy Update
5. RTC Project

The above matters are exempt under one or more of sections 552(c)(2), (8), (9)(A) and (9)(B) of title 5 of the United States Code. 5 U.S.C. 552b(c)(2), (8), (9)(A) and (9)(B).

CONTACT PERSON FOR MORE INFORMATION: Elaine Baker, Executive Secretary to the Board, (202) 408–2837.

J. Stephen Britt,

Executive Director.

[FR Doc. 91–24292 Filed 10–4–91; 11:23 am]

BILLING CODE 6725–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

TIME AND DATE: 11:00 a.m., Tuesday, October 15, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed acquisition of currency processing equipment within the Federal Reserve System. (This item was originally announced for a closed meeting on October 7, 1991.)

2. Federal Reserve Bank and Branch director appointments.

3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 4, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–24366 Filed 10–4–91; 3:19 pm]

BILLING CODE 6210–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 7, 14, 21, and 28, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of October 7

Monday, October 7

10:30 a.m.
Briefing on Use of Advanced Computers in AEOD and Status of Upgrading NRC Operations Center's Emergency Telecommunications Systems (Public Meeting)

3:00 p.m.
Collegial Discussion of Recent International Safety Issues (Public Meeting)

4:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Tuesday, October 8

8:30 a.m.
Discussion of management-Organization and Internal Personnel Matters (Closed—Ex. 2)

Week of October 14—Tentative

Thursday, October 17

2:00 p.m.
Briefing on Staff Recommended Course of Action on Adhering to 10 CFR Part 52 (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Rule Entitled "Material Control and Accounting Requirements for Uranium Enrichment Facilities Producing Special Nuclear Material of Low Strategic Significance" and Conforming Amendments to 10 CFR Parts 2, 40, 70, and 74 (Tentative)

Friday, October 18

9:00 a.m.
Briefing on IIT Report on Nine Mile Point (Public Meeting)

10:00 a.m.
Briefing on GE-Wilmington Incident (Public Meeting)

Week of October 21—Tentative

Tuesday, October 22

2:00 p.m.
Briefing on Status of Technical Specifications Improvement Program (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 28—Tentative

Tuesday, October 29

1:30 p.m.
Briefing on Status of Emergency Planning Issues for Pilgram (Public Meeting)

Wednesday, October 30

10:00 a.m.
Briefing on Site Decommissioning Management Plan (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: October 3, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc 91–24355 Filed 10–4–91; 3:19 pm]

BILLING C DE 7590–01–M

Corrections

Federal Register

Vol. 56, No. 195

Tuesday, October 8, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment to the Export Visa Arrangement for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Union of Soviet Socialist Republics

Correction

In notice document 91-21088 beginning on page 43743 in the issue of September 4, 1991, make the following correction:

On page 43743, in the third, under **SUPPLEMENTARY INFORMATION:**, in the second paragraph, in the seventh line, after "after" insert "September 11, 1991".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. TA92-2-82-000 and TM92-2-82-000]

Viking Gas Transmission Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

Correction

In notice document 91-23013 beginning on page 48551, in the issue of Wednesday, September 25, 1991, make the following correction:

On page 48552, in the first column, in the file line at the end of the document "FR Doc. 91-23012" should read "FR Doc. 91-23013".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 333

[Docket No. 81N-114A]

RIN 0905-AA06

Topical Acne Drug Products for Over-the-Counter Human Use; Amendment of Tentative Final Monograph

Correction

In proposed rule document 91-18696 beginning on page 37622 in the issue of Wednesday, August 7, 1991, make the following corrections:

1. On page 37622, in the third column, in the fourth line, "Slage" should read "Slaga".

2. On page 37623, in the third column, in the third full paragraph, four lines from the bottom, and in the fourth full paragraph, four lines from the bottom, "neoplasma" should read "neoplasms".

3. On page 37625, in the first column, in the sixth full paragraph, in the seventh line, "cincinomas" should read "carcinomas".

4. On page 37626, in the second column, in the 11th full paragraph, in the 8th line, "application" should read "applications".

5. On page 37630, in the first column, in the first full paragraph, in the ninth line from the bottom, "cytoxicity" should read "cytotoxicity".

6. On page 37632, in the second column, in paragraph (11), in the last line, "34:" should read "31:".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 870

Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting, Reclamation Fee, Basis for Coal Weight Determination

Correction

In proposed rule document 91-9856 appearing on page 19335 in the issue of Friday, April 26, 1991, in the second column, in the file line at the end of the document, "FR Doc. 91–8856" should read "FR Doc. 91–9856".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 189

[CGD 88-032]

RIN 2115-AD05

Incorporation and Adoption of Industry Standards

Correction

In rule document 91-17642 beginning on page 35827 in the issue of Monday, July 29, 1991 and corrected on page 46354 in the issue of Wednesday, September 11, 1991, make the following correction:

§ 189.55-5 [Corrected]

On page 46354, in the third column, the second correction should read as follows:

2. On page 35829, in the first column, in § 189.55-5(b), the footnote reference 1 should appear after "structure".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI 069-89]

Reasonable Mortality Charges for Life Insurance Contracts

Correction

In proposed rule document 91-15634 beginning on page 30718, in the issue of Friday, July 5, 1991, make the following corrections

§ 1.7702-1 [Corrected]

1. On page 30721, in the first column, § 1.7702-1(c)(2)(1) is correctly designated as § 1.7702-1(c)(2)(i).

2. On the same page, in the second column, in § 1.7702-1(c)(2), in the first line "*Substantial*" should read "*Substandard*".

BILLING CODE 1505-01-D.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI-189-84]

RIN 1545-AH46

Original Issue Discount; Treatment of Debt Instruments Purchased at a Premium

Correction

In proposed rule document 91-16556, beginning on page 31887, in the issue of Friday, July 12, 1991, make the following corrections:

1. On page 31888, in the second column, in the last paragraph, in the ninth line "of" should read "or".

2. On the same page, in the third column, in the first full paragraph, in the ninth line "1727(c)" should read "1272(c)".

BILLING CODE 1505-01-D

federal register

Tuesday
October 8, 1991

Part II

Environmental Protection Agency

40 CFR Part 136

Guidelines Establishing Test Procedures for Analysis of Pollutants Under Clean Water Act; Final Rule and Technical Amendments

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL 4012-5]

Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Technical amendments.

SUMMARY: This action under the Clean Water Act (CWA) section 304(h) amends 40 CFR part 136 to add clarifying footnotes to the lists of approved test procedures, update method citations in Tables IA, IB, IC, ID, and IE to amend the incorporation by reference section of the regulation accordingly, and to correct certain typographical errors and omissions.

EFFECTIVE DATE: This amendment becomes effective on October 8, 1991. The incorporation by reference of the publications listed in this notice are approved by the Director of Federal Register as of October 8, 1991.

FOR FURTHER INFORMATION CONTACT: James J. Lichtenberg Environmental Monitoring Systems Laboratory, Office of Research and Development, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268, Telephone Number: (513) 569-7306.

SUPPLEMENTARY INFORMATION:

I. These technical amendments update the references to analytical methods already approved under section 304(h) to the current editions published by EPA, U.S. Geological Survey, and various standards organizations. No new methods are introduced. EPA has carefully reviewed each cited method for substantive changes between the current editions and the previously cited editions. Methods cited in this amendment that were not previously cited are substantively the same as the approved EPA method and/or were derived from the EPA method.

In publishing the final rule (55 FR 24532, June 15, 1990) approving the Direct Current Plasma (DCP) Atomic Emission Spectrometric Method as an approved Nationwide Alternate Procedure (ATP), EPA inadvertently omitted incorporating the reference to the method into § 136.3(b) "Identification of Test Procedures" under "References, Sources, Costs, and Table Citations". This omission is being corrected in a separate notice by adding reference 32, "Direct Current Plasma (DCP) Optical Emission Spectrometric Method for Trace Elemental Analysis of Water and Wastes, Method #AES0029", 1986—revised 1991, Applied Research Laboratories, Inc., 24911 Avenue Stanford, Valencia, CA 91355, Table IB, Note 33 to that section.

On July 3, 1991 (at 56 FR 30519), EPA proposed to eliminate Freon 113 from all of its environmental test methods because of its association with the depletion of the stratospheric ozone layer. This Rule will affect methods approved under 40 CFR part 136 for Parameter 41—Oil and Grease, i.e., EPA Method 413.1 and Method 5520B of Standard Methods. In the July 3 proposed rule, EPA recommended a solvent mixture, n-hexane + methyl tertiary butyl ether (80+20), as the substitute for Freon 113 in the gravimetric measurement of oil and grease. Based on the public comments and the results of ongoing research this mixture or another solvent will be selected for inclusion in the Final Rule. EPA, at that time, will approve the selected solvent for use under 40 CFR part 136.

The U.S.G.S. Method for fecal streptococci method 30055-77 cited in Table IA was revised in 1985 to include preparation of the KF Streptococcus Agar by boiling in a water bath to avoid scorching the medium. Therefore, the method is fully acceptable.

II. The EPA Method References have been updated to include the 1983 editorially revised edition of "Methods for Chemical Analysis of Water and Wastes" so that this edition or the 1979 edition, whichever is available to the analyst, may be used.

III. The Standard Methods references in Tables IA, IB, IC, ID, and IE are generally updated to the 17th Edition by today's notice. Each approved method was carefully reviewed for substantive changes between the 16th and 17th Editions. With the exception of the Turbidimetric Method for Sulfate, the 17th Edition Methods were found to be technically equivalent to the approved 16th Edition Methods. Therefore, we are updating the Standard Methods citations to the 17th Edition for all but the Turbidimetric Method for Sulfate which will continue to be cited to the 15th Edition. The list of references incorporated into this regulation continues to cite the 13th Edition of Standard Methods to support the titrimetric iodine method for sulfide.

Standard Methods has edited certain previously approved EPA 600 Series Methods for Organic Chemicals in Water to its format and published them in the Standard Methods 17th Edition. EPA has examined the Standard Methods version of these methods and found them to be technically the same as the EPA approved methods. Therefore, EPA by this notice accepts the incorporation by reference of Standard Methods 6210B, 6220B, 6230B, 6410B, 6420B, 6440B, and 6630B for use under 40 CFR, Part 136. These methods are for organic analytes non-pesticides listed in Table 1C and pesticides listed in Table 1D. The listings reflect the numbering system change made in the 17th Edition of Standard Methods.

IV. References in Tables IA, IB, IC, ID, and IE to the American Society for Testing and Materials (ASTM), U.S. Geological Survey (USGS), and or the Association of Official Analytical Chemists (AOAC) Methods have also been updated where appropriate to the most recent editions. The AOAC methods cited reflect the numbering system changes that were made in the 15th Edition of the AOAC Methods.

V. The remaining amendments in this notice are very minor and are typographical or editorial in nature. Tables IA, IB, IC, ID, and IE and the notes to these Tables have been reprinted in their entirety for the convenience of the user.

VI. The Administrative Procedure Act, 5 U.S.C. 551, et seq., authorizes an agency to forego notice and comment rulemaking when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest. EPA believes that public comment on these technical amendments is unnecessary because the need for the updates to references and the errors were pointed out and urged by the public; to benefit the public, the updates should be approved and the errors should be corrected as soon as possible. Therefore, notice and public procedure is impracticable, unnecessary, and contrary to the public interest and does not apply to this Technical Amendment notice.

VII. Executive Order 12291 requires each Federal agency to determine if a regulation is a major rule as defined by the order and to prepare and consider regulatory impact analysis for such rules. This technical amendment is not a major regulatory action because it will not have a major financial or adverse impact on the community.

The Regulatory Flexibility Act requires (5 U.S.C. 601 et seq.) EPA to consider the effect of regulations on small entities. This technical amendment will not have a significant effect on a substantial number of small systems.

The Paperwork Reduction Act seeks to minimize the reporting burden on the

regulated community, as well as minimize the cost of federal information collection and dissemination. This technical amendment contains no information collection activities and, therefore, no Information Collection Request (ICR) will be submitted to the Office of Management and Budget (OMB) for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 136

Incorporation by reference, Water pollution control.

Signature:

Erich Bretthauer,

Assistant Administrator, Office of Research and Development (RD–672)

PART 136—[AMENDED]

The following amendments are made to 40 CFR part 136.

1. The authority citation for part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a) Pub. L. 95–217, Stat. 1566, et seq. (33 U.S.C. 1251, et seq.) (the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977).

2. In § 136.3, Tables IA, IB, IC, ID, and IE and paragraphs (b), (c), (d) and (e) are revised to read as follows:

§ 136.3 Identification of test procedures.

* * * * *

TABLE IA.—LIST OF APPROVED BIOLOGICAL TEST PROCEDURES

Parameter, units and method	Method [1]	EPA [2]	Reference (method No. or page)		
			Standard methods 17th ed.	ASTM	USGS [3]
Bacteria:					
1. Coliform (fecal), number per 100 ml	MPN, 5 tube, 3 dilution; or, membrane filter (MF) [4], single step.	p. 132 p. 124	9221C 9222D		
2. Coliform (fecal) in presence of chlorine, number per 100 ml.	MPN, 5 tube, 3 dilution; or, MF [4], single step [5].	p. 132 p. 124	9221C 9222D	.....	B–0050–85.
3. Coliform (total, number per 100 ml.)	MPN, 5 tube, 3 dilution; or, MF [4], single step or two step.	p. 114 p. 108	9221B 9222B	..... 	 B–0025–85.
4. Coliform (total), in presence of chlorine, number per 100 ml.	MPN, 5 tube, dilution; or MF [4] with enrichment.	p. 114 p. 111	9221B 9222B + B.5C	 	
5. Fecal streptococci, number per 100 ml.	MPN, 5 tube, 3 dilution; MF [4]; or, plate count.	p. 139 p. 136 p. 143	9230B 9230C	..... 	 B–0055–85.

Table IA notes:

[1] The method used must be specified when results are reported.

[2] Bordner, R.H., and J.A. Winter, eds. 1978. "Microbiological Methods for Monitoring the Environment, Water and Waste." Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency. EPA–600/8–78–017.

[3] Britton, L.J., and P.E. Greeson, P.E., eds., 1989. "Methods for Collection and Analysis of Aquatic Biological and Microbiological Samples," Techniques of Water Resources Investigations of the U.S. Geological Survey, Techniques of Water Resources Investigations, Book 5, Chapter A4, Laboratory Analysis, U.S. Geographic Survey, U.S. Department of Interior, Reston, Virginia.

[4] A 0.45 μm membrane filter (MF) or other pore size certified by the manufacturer to fully retain organisms to be cultivated, and to be free of extractables which could interfere with their growth.

[5] Because the MF technique usually yields low and variable recovery from chlorinated wastewaters, the Most Probable Number method will be required to resolve any controversies.

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES

Parameter, units and method	EPA [1]	Reference (method No. or page)			Other
		Std. methods 17th Ed.	ASTM	USGS [2]	
1. Acidity, as $CaCO_3$, mg/L;					
Electrometric and point or phenolphthalein and point	305.1	2310–B(4a)	D1067–88		
2. Alkalinity, as $CaCO_3$, mg/L;					
Electrometric or colorimetric utration to pH 4.5 manual or	310.1	2320–B	D1067–88	I–1030–85	973.43.[3]
Automated	310.2			I–2030–85	
3. Aluminum—Total [4], mg/L; Digestion [4] followed by:					
AA direct aspiration	202.1	3111D		I–3051–85	
AA furnace	202.2	3113B			
Inductively coupled plasma (ICP)	200.7 [5]				
Direct current plasma (DCP), or			D4190–88		Note 34.
Colorimetric (Eriochrome cyanine R)		3500–A1 D			
4. Ammonia (as N), mg/L;					
Manual distillation (at pH 9.5) [6], followed by	350.2	4500–NH_3 B			973.49.[3]
Nesslerization	350.2	4500–NH_3 C	D1426–79(A)	I–3520–85	973.46.[3]
Titration	350.2	4500–NH_3 E			
Electrode	350.3	4500–NH_3 G	D1426–79(D)		
Automated phenate or	350.1	4500–NH_3 H	D1426–79(C)	I–4523.85	
Automated electrode					Note 7.
5. Antimony—Total [4], mg/L; Digestion [4] followed by:					
AA direct aspiration	204.1	3111 B			
AA furnace, or	204.2	3111 B			
ICP	200.7 [5]	3120 B			
6. Arsenic—Total [4], mg/L;					
Digestion [4] followed by:	206.5				
AA gaseous hydride	206.3	3114	D2972–84(B)	I–3062.85	
AA furnace	206.2	3113–4d			
ICP, or	200.7 [5]				

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	EPA [1]	Reference (method No. or page)			Other
		Std. methods 17th Ed.	ASTM	USGS [2]	
Colorimetric (SDDC)	206.4	3500-As	D2972-84(A)	I-3060-85	
7. Barium—Total [4], mg/L; Digestion [4] followed by:					
AA direct aspiration	208.1	3111 D		I-3084-85	
AA furnace	208.2	3113 B			
ICP, or	200.7 [5]	3120 B			
DCP					Note 34.
8. Beryllium—Total [4], mg/L; Digestion [4] followed by:					
AA direct aspiration	210.1	3111 D	D3645-84-88(A)	I-3095-85	
AA furnace	210.2	3113 B			
ICP	200.7 [5]	3120 B			
DCP, or			D4190-88		Note 34.
Colorimetric (aluminon)		3500-Be D			
9. Biochemical oxygen demand (BOD_5), mg/L; Dissolved Oxygen Depletion	405.1	5210		I-1578-78 [6]	973.44 [3] p. 17.[9]
10. Boron—Total, mg/L;					
Colorimetric (curcumin)	212.3	4500-B B		I-3112-85	
ICP, or	200.7 [5]	3120 B			
DCP			D4190-88		Note 34.
11. Bromide, mg/L; Titrimetric	320.1		D1246-82 (C)(1988)	I-1125-85	p. S44.[10]
12. Cadmium—Total [4], mg/L; Digestion [4] followed by:					
AA direct aspiration	213.1	3111 B or C	D3557-90 (A or B)	I-3135-85 or I-3136-85.	974.27 [3] p. 37.[9]
AA furnace	213.2	3113 B			
ICP	200.7 [4]	3120 B		I-1472-85	
DCP			D4190-90		Note 34.
Voltametry [11], or			D3557-90(C)		
Colorimetric (Dithizone)		3500-Cd D			
13. Calcium—Total [4], mg/L; Digestion [4] followed by:					
AA direct aspiration	215.1	3111 B	D511-88(B)	I-3152-85	
ICP	200.7 [5]	3120 B			
DCP, or					Note 34.
Titrimetric (EDTA)	215.2	3500-Ca D	D511-88(A)		
14. Carbonaceous biochemical oxygen demand ($CBOD_5$), mg/L [1] Dissolved Oxygen Depletion with nitrification inhibitor		5210 B			
15. Chemical oxygen demand (COD), mg/L; Titrimetric, or	410.1	5220 B	D1252-88	I-3560 or	973.46 [3] p. 17.[9]
	410.2 or			I-3562-85	
	410.3				
Spectrophotometric, manual or automated	410.4			I-3561-85	Notes 13 or 14.
16. Chloride, mg/L;					
Titrimetric (silver nitrate)		4500-Cl B	D512-89(B)	I-1183-85	
or (Mercuric nitrate), or	325.3	4500-Cl C	D512-89(A)	I-1184-85	973.51.[3]
Colorimetric, manual or			D512-89(C)	I-1187-85	
Automated (Ferricyanide)	325.1 or 325.2.	4500-Cl C		I-2187-85	
17. Chlorine—Total residual, mg/L; Titrimetric:					
Amperometric direct	330.1	4500-Cl D	D1253-76(A)		
Starch end point direct	330.3	4500-Cl B	D1253-76(B) (1985) Part 18.3.		
Back titration either end point [15], or	330.2	4500-Cl C			
DPD-FAS	330.4	4500-Cl F			
Spectrophotometric, DPD or Electrode	330.5	4500-Cl G			Note 16.
18. Chromium VI dissolved, mg/L; 0.45 micron filtration followed by:					
AA chelation-extration, or	218.4	3111 A		I-1232-85	
Colorimetric (Diphenylcarbazide)				I-1230-85	307B.[17]
19. Chromium—Total [4], mg/L; Digestion [4] followed by:					
AA direct aspiration	218.1	3111 B	D1687-86(D)	I-3236-85	974.27.[3]
AA chelation-extraction	218.3	3111 C			
AA furnace	218.2	3113 B			
ICP	200.7 [5]	3120 B			
DCP, or			D4190-88		Note 34.
Colorimetric (Diphenylcarbazide)		3500-Cr D	D1687-86(A)		
20. Cobalt—Total [4], mg/L; Digestion [4] followed by:					
AA direct aspiration	219.1 or C	3111 B (A or B)	D3558-90	I-3239-85	p. 37.[9]
AA furnace	219.2	3113 B			
ICP, or	200.7 [5]	3120 B			
DCP			D4190-88		Note 34.
21. Color platinum cobalt units or dominant wavelength, hue, luminance purity:					
Colorimetric (ADMI), or	110.1	2120 E			Note 18.
(Platinum cobalt), or	110.2	2120 B		I-1250-85	
Spectrophotometric	110.3	2120 C			

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	EPA [1]	Reference (method No. or page)			Other
		Std. methods 17th Ed.	ASTM	USGS [2]	
22. Copper—Total [4], mg/L; Digestion [4] followed by:					
AA direct aspiration	220.1	3111 B or C	D1688-90 (A or B)	I-3270-85 or I-3271-85.	974.27 [3] p. 39. [9]
AA furnace,	220.2	3113 B			
ICP	200.7 [5]	3120 B			
DCP, or			D4190-88		Note 34.
Colorimetric (Neocuproine), or		3500-Cu D or E	D1688-84(88)(A)		
(Bicinchoninate)					Note 19.
23. Cyanide—Total, mg/L;					
Manual distillation with $MgCl_2$ followed by		4500-CN-C			
Titrimetric, or		4500-CN-D			p. 22. [9]
Spectrophotometric, manual or	335.2	4500-CN-E	D2036-89(A)	I-3300-85	
Automated [20]	335.3		D2036-89(A)		
24. Cyanide amendable to chlorination, mg/L;					
Manual distillation with $MgCl_2$ followed by titrimetric or Spectrophotometric.	335.1	4500-CN-G	D2036-89(B)		
25. Fluoride—Total, mg/L;					
Manual distillation [6] followed by		4500-F-B			
Electrode, manual or	340.2	4500-F-C	D1179-88(B)		
Automated				I-4327-85	
Colorimetric (SPADNS)	340.1	4500-F-D	D1179-80(A) (1988).		
or Automated complexone	340.3	4500-F-E			
26. Gold—Total [4], mg/L; Digestion [4] followed by:					
AA direct aspiration	231.1	3111 B			
AA furnace, or	231.2				
DCP					Note 34.
27. Hardness—Total, as $CaCO_3$, mg/L;					
Automated colorimetric	130.1				
Titrimetric (EDTA), or Ca plus Mg as their carbonates, by inductively coupled plasma or AA direct aspiration. (See Parameters 13 and 33).	130.2	2340 C	D1126-86 (1990)	I-1338-85	973.52B. [3]
28. Hydrogen ion (pH), pH units:					
Electrometric, measurement, or	150.1	4500-H^+ [8]	D1293-84 (A or B) (1990).	I-1586-85	973.41. [3]
Automated electrode					Note 21.
29. Iridium—Total [4], mg/L; Digestion [4] followed by:					
AA direct aspiration or	235.1	3111 B			
AA furnace	235.2				
30. Iron—Total [4], mg/L; Digestion [4] followed by:					
AA direct aspiration	236.1	3111 B or C	D1068-90 (A or B)	I-3381-85	973.27. [2]
AA furnace	236.2	3113 B			
ICP	200.7 [5]	3120 B			
DCP, or					Note 34.
Colorimetric (Phenanthroline)		3500-Fe D	D1068-90(D)		Note 22.
31. Kjeldahl nitrogen—Total, (as N), mg/L;		4500-N org B or C	3590-84(A)		
Digestion and distillation followed by:					
Titration	351.3	4500-NH_3 E	D3590-89(A)		973.48. [3]
Nesslerization	351.3	4500-NH_3 C	D3590-89(A)		
Electrode	351.3	4500-NH_3 F or G			
Automated phenate	351.1	4500-NH_3 H		I-4551-78 [8]	
Semi-automated block digestor, or	351.2		D3590-89(B)		
Potentiometric	351.4		D3590-89(A)		
32. Lead—Total [4], mg/L; Digestion [4] followed by:					
AA direct aspiration	239.1	3111 B or C	D3559-90 (A or B)	I-3399-85	974.27. [3]
AA furnace	239.2	3113 B			
ICP	200.7 [5]	3120 B			
DCP			D4190-88		Note 34.
Voltametry [11], or			D3559-90(C)		
Colorimetric (Dithizone)		3500-Pb D			
33. Magnesium—Total [4], mg/L; Digestion [4] followed by:					
AA direct aspiration	242.1	3111 B	D511-88(B)	I-3447-85	974.27. [3]
ICP	200.7 [5]	3120 B			
DCP, or					Note 34.
Gravimetric		3500-mg D	D511-77(A)		
34. Manganese—Total [4], mg/L; Digestion [4] followed by:					
AA direct aspiration	243.1	3111 B or C	D858-90 (A or B)	I-3454-85	974.27. [3]
AA furnace	243.2	3113 B			
ICP	200.7 [5]	3120 B			
DCP, or			D4190-88		Note 34.
Colorimetric (Persulfate), or		3500-Mn D	D858-84(A) (1988)		920.203. [3]
(Periodate)					Note 23.
35. Mercury—Total [4], mg/L;					
Cold vapor, manual or	245.1	3112 B	D3223-86	I-3462-85	977.22. [3]
Automated	245.2				
36. Molybdenum—Total [4], mg/L; Digestion [4] followed by:					
AA direct aspiration	246.1	3111 D		I-3490-85	

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	EPA[1]	Reference (method No. or page)			Other
		Std. methods 17th Ed.	ASTM	USGS[9]	
AA furnace	246.2	3113 B			
ICP, or	200.7[5]	3120 B			
DCP					Note 34.
37. Nickel—Total[4], mg/L; Digestion[4] followed by:					
AA direct aspiration	249.1	3111 B or C	D1886-90 (A or B)	I-3499-85	
AA furnace	249.2	3113 B			
ICP	200.7[5]	3120 B			
DCP, or			D4190-88		Note 34.
Colorimetric (Heptoxime)		3500-Ni D			
38. Nitrate (as N), mg/L;					
Colorimetric (Brucine sulfate) or Nitrate-nitrite N minus Nitrite N (See parameters 39 and 40)	352.1		D992-71		973.50[3], 419D[17], p. 28.[9]
39. Nitrate-nitrite (as N), mg/L;					
Cadmium reduction, Manual or	353.3	4500-NO_3 E	D3867-90(B)		
Automated, or	353.2	4500-NO_3 F	D3867-90(A)	I-4545-85	
Automated hydrazine	353.1	4500-NO_3 H			
40. Nitrite (as N), mg/L; Spectrophotometric:					
Manual or	354.1	4500-NO_2 B	D1254-67		Note 25.
Automated (Diazotization)				I-4540-85	
41. Oil and grease—Total recoverable, mg/L;					
Gravimetric (extraction)	413.1	5520 B			
42. Organic carbon—Total (TOC), mg/L;					
Combustion or oxidation	415.1	5310-B	D2579-85 (A or B)		973.47[3], p. 14.[24]
43. Organic nitrogen (as N), mg/L; Total Kjeldahl N (Parameter 31) minus amonia N (Parameter 4)					
44. Orthophosphate (as P), mg/L; Ascorbic acid method:					
Automated, or	365.1	4500-P F		I-4601-85	973.56.[3]
Manual single reagent, or	365.2	4500-P E	D515-88(A)		973.55.[3]
Manual two reagent	365.3				
45. Osmium—Total[4], mg/L; Digestion[4] followed by:					
AA direct aspiration, or	252.1	3111 D			
AA furnace	252.2				
46. Oxygen dissolved, mg/L;					
Winkler (Azide: modification), or	360.2	4500-O C	D888-81(C) (1988)	I-1575-78[8]	973.45B.[3]
Electrode	360.1	4500-O G		I-1576-78[8]	
47. Palladium—Total[4], mg/L; Digestion[4] followed by:					
AA direct aspiration, or	253.1	3111 B			p. S27.[10]
AA furnace	253.2				p. S28.[10]
DCP					Note 34.
48. Phenols, mg/L; Manual distillation[26]	420.1		D1783-80 (A or B)		Note 27.
Followed by:					
Colorimetric (4AAP) manual, or	420.1				Note 27.
Automated[19]	420.2				
49. Phosphorus (elemental), mg/L; Gas-liquid chromatography					Note 28.
50. Phosphorus—Total, mg/L;					
Persulfate digestion followed by:	365.2	4500-P-B,5			973.55.[3]
Manual, or	365.2 or 365.3	4500-P-E	D515-88(A)		
Automated ascorbic acid reduction, or	365.1	4500-P-F		I-4600-85	973.56.[3]
Semi-automated block digestor	365.4				
51. Platinum—Total[4], mg/L; Digestion[4] followed by:					
AA direct aspiration	255.1	3111 B			
AA furnace	255.2				
DCP					Note 34.
52. Potassium—total[4], mg/L; Digestion[4] followed by:					
AA direct aspiration	258.1	3111 B		I-3630-85	973.53.[3]
ICP	200.7[5]				
Flame photometric, or		3500-K D	D1428-82(A)		
Colorimetric (Cobaltinitrate)					317B.[17]
53. Residue—Total, mg/L; Gravimetric, 103-105°	160.3	2540 B		I-3750-85	
54. Residue—filterable, mg/L; Gravimetric, 180°	160	2540-C		I-1750-85	
55. Residue—nonfilterable, (TSS), mg/L; Gravimetric, 103-105° post washing of residue.	160.2	2540-D		I-3765-85	
56. Residue—settleable, mg/L; Volumetric, (Imhoff cone), or gravimetric.	160.5	2540 F			
57. Residue—Volatile, mg/L; Gravimetric, 550°	160.4	2540 E		I-3753-85	
58. Rhodium—Total[4], mg/L; Digestion[4] followed by:					
AA direct aspiration, or	265.1	3111 B			
AA furnace	265.2				
59. Ruthenium—Total[4], mg/L; Digestion[4] followed by:					
AA direct aspiration, or	267.1	3111 B			
AA furnace	267.2				
60. Selenium—Total[4], mg/L; Digestion[4] followed by:					
AA furnace	270.2	3113 B			
ICP, or	200.7[5]				
AA gaseous hydride	270.3	3114 B	D3859-88(A)	I-3667-85	

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	EPA[1]	Reference (method No. or page)			Other
		Std. methods 17th Ed.	ASTM	USGS[2]	
61. Silica—Dissolved, mg/L; 0.45 micron filtration followed by:					
Colorimetric, Manual or	370.1	4500–Si D	D859–88(B)	I–1700–85	
Automated (Molybdosilicate), or				I–2700–85	
ICP	200.7[5]				
62. Silver—Total[29], mg/L; Digestion[4] followed by:					
AA direct aspiration	272.1	3111 B or C		I–3720–85	973.27[3], p. 37.[9]
AA furnace	72.2	3113 B			
Colorimetric (Dithizone)					319B.[17]
ICP, or	200.7[5]				
DCP					Note 34.
63. Sodium—Total[4], mg/L; Digestion[4] followed by:					
AA direct aspiration	273.1	3111 B		I–3735–85	973.54.[3]
ICP	200.7[5]	3120 B			
DCP, or					Note 34.
Flame photometric		3500–Na D	D1428–82(A)		
64. Specific conducance, micromhos/cm at 25° C:					
Wheatstone bridge	120.1	2510 B	D1125–82(A)	I–1780–85	973.40.[3]
65. Sulfate (as SO_4), mg/L;					
Automated colorimetric (barium chloranilate)	375.1				
Gravimetric, or	375.3	4500–SO_4^{-2} C or D.	D516–82(A) (1988)		925.54.[3]
Turbidimetric	375.4		D516–88		426C.[30]
66. Sulfide (as S), mg/L;					
Titrimetric (iodine), or	376.1	4500–S^{-2} E		I–3840–85	228A.[31]
Colorimetric (methylene blue)	376.2	4500–S^{-2} D			
67. Sulfite (as SO_3), mg/L;					
Titrimetric (iodine-iodate)	377.1	4500–SO_3^{-2} B	D1339–84(C)		
68. Surfactants, mg/L;					
Colorimetric (methylene blue)	425.1	5540 C	D2330–88		
69. Temperature,					
C.: Thermometric	170.1	2550 B			Note 32.
70. Thallium—Total[4], mg/L; Digestion[4] followed by:					
AA direct aspiration	279.1	3111 B			
AA furnace, or	279.2				
ICP	200.7[5]				
71. Tin—Total[4], mg/L; Digestion[4] followed by:					
AA direct aspiration, or	282.1	3111 B		I–3850–78[6]	
AA furnace	282.2	3113 B			
72. Titanium—Total[4], mg/L; Digestion[4] followed by:					
AA direct aspiration	283.1	3111 D			
AA furnace	283.2				
DCP					Note 34.
73. Turbidity, NTU:					
Nephelometric	180.1	2130 B	D1889–88a	I–3860–85	
74. Vanadium—Total[4], mg/L; Digestion[4] followed by:					
AA direct aspiration	286.1	3111 D			
AA furnace	286.2				
ICP	200.7[5]	3120 B			
DCP, or			D4190–88		Note 34.
Colorimetric (Gallic acid)		3500–V D	D3373–84(A) (1988).		
75. Zinc—Total[4], mg/L; Digestion[4] followed by:					
AA direct aspiration	289.1	3111 (B or C)	D1691–90 (A or B)	I–3900–85	974.27[3], p. 37.[9]
AA furnace	289.2				
ICP	200.7[5]	3120 B			
DCP, or			D4190–88		Note 34.
Colorimetric (Dithizone) or		3500–Zn E			
(Zincon)		3500–Zn F			Note 33.

Table IB notes:

[1] "Methods for Chemical Analysis of Water and Wastes", Environmental Protection Agency, Environmental Monitoring Systems Laboratory-Cincinnati (EMSL–CI), EPA–600/4–79–020, Revised March 1983 and 1979 where applicable.

[2] Fishman, M. J., et al, "Methods for Analysis of Inorganic Substances in Water and Fluvial Sediments," U.S. Department of the Interior, Techniques of Water–Resource Investigations of the U.S. Geological Survey, Denver, CO, Revised 1989, unless otherwise stated.

[3] "Official Methods of Analysis of the Association of Official Analytical Chemists," methods manual, 15th ed. (1990).

[4] For the determination of total metals the sample is not filtered before processing. A digestion procedure is required to solubilize suspended material and to destroy possible organic-metal complexes. Two digestion procedures are given in "Methods for Chemical Analysis of Water and Wastes, 1979 and 1983." One (Section 4.1.3), is a vigorous digestion using nitric acid. A less vigorous digestion using nitric and hydrochloric acids (section 4.1.4) is preferred; however, the analyst should be cautioned that this mild digestion may not suffice for all samples types. Particularly, if a colorimetric procedure is to be employed, it is necessary to ensure that all organo-metallic bonds be broken so that the metal is in a reactive state. In those situations, the vigorous digestion is to be preferred making certain that at no time does the sample go to dryness. Samples containing large amounts of organic materials would also benefit by this vigorous digestion. Use of the graphite furnace technique, inductively coupled plasma, as well as determinations for certain elements such as arsenic, the noble metals, mercury, selenium, and titanium require a modified digestion and in all cases the method write-up should be consulted for specific instruction and/or cautions.

NOTE: If the digestion included in one of the other approved references is different than the above, the EPA procedure must be used.

Dissolved metals are defined as those constituents which will pass through a 0.45 micron membrane filter. Following filtration of the sample, the referenced procedure for total metals must be followed. Sample digestion for dissolved metals may be omitted for AA (direct aspiration or graphite furnace) and ICP analyses provided the sample solution to be analyzed meets the following criteria:

a. has a low COD (<20)

b is visibly transparent with a turbidity measurement of 1 NTU or less

c. is colorless with no perceptible odor, and
d. is of one liquid phase and free of particulate or suspended matter following acidification.

[5] The full text of Method 200.7, "Inductively Coupled Plasma Atomic Emission Spectrometric Method for Trace Element Analysis of Water and Wastes," is given at Appendix C of this Part 136.

[6] Manual distillation is not required if comparability data on representative effluent samples are on company file to show that this preliminary distillation step is not necessary: however, manual distillation will be required to resolve any controversies.

[7] Ammonia, Automated Electrode method, Industrial Method Number 379-75 WE, dated February 19, 1976, (Bran & Luebbe (Technicon) AutoAnalyzer II, Bran & Luebbe Analyzing Technologies, Inc., Elmsford, N.Y. 10523.

[8] The approved method is that cited in "Methods for Determination of Inorganic Substances in Water and Fluvial Sediments", USGS TWRI, Book 5, Chapter A1 (1979).

[9] American National Standard on Photographic Processing Effluents, Apr. 2, 1975. Available from ANSI, 1430 Broadway, New York, NY 10018.

[10] "Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency," Supplement to the Fifteenth Edition of Standard Methods for the Examination of Water and Wastewater (1981).

[11] The use of normal and differential pulse voltage ramps to increase sensitivity and resolution is acceptable.

[12] Carbonaceous biochemical oxygen demand ($CBOD_5$) must not be confused with the traditional BOD_5 test which measures "total BOD." The addition of the nitrification inhibitor is not a procedural option, but must be included to report the $CBOD_5$ parameter. A discharger whose permit requires reporting the traditional BOD_5 may not use a nitrification inhibitor in the procedure for reporting the results. Only when a discharger's permit specifically states $CBOD_5$ is required, can the permittee report data using the nitrification inhibitor.

[13] OIC Chemical Oxygen Demand Method, Oceanography International Corporation, 512 West Loop, P.O. Box 2980, College Station, TX 77840.

[14] Chemical Oxygen Demand, Method 8000, Hach Handbook of Water Analysis, 1979, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

[15] The back titration method will be used to resolve controversy.

[16] Orion Research Instruction Manual, Residual Chlorine Electrode Model 97-70, 1977, Orion Research Incorporated, 840 Memorial Drive, Cambridge, MA 02138. The calibration graph for the Orion residual chlorine method must be derived using a reagent blank and three standard solutions, containing 0.2, 1.0, and 5.0 ml 0.00281 N potassium iodate/100 ml solution, respectively.

[17] The approved method is that cited in Standard Methods for the Examination of Water and Wastewater, 14th Edition, 1976.

[18] National Council of the Paper Industry for Air and Stream Improvement, (Inc.) Technical Bulletin 253, December 1971.

[19] Cooper, Biocinchoinate Method, Method 8506, Hach Handbook of Water Analysis, 1979, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

[20] After the manual distillation is completed, the autoanalyzer manifolds in EPA Methods 335.3 (cyanide) or 420.2 (phenols) are simplified by connecting the resample line directly to the sampler. When using the manifold setup shown in Method 335.3, the buffer 6.2 should be replaced with the buffer 7.6 found in Method 335.2.

[21] Hydrogen ion (pH) Automated Electrode Method, Industrial Method Number 378-75WA, October 1976, Bran & Luebbe (Technicon) AutoAnalyzer II. Bran & Luebbe Analyzing Technologies, Inc., Elmsford, N.Y. 10523.

[22] Iron, 1,10-Phenanthroline Method, Method 8008, 1980, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

[23] Manganese, Penodate Oxidation Method, Method 8034, Hach Handbook of Wastewater Analysis, 1979, pages 2-113 and 2-117, Hach Chemical Company, Loveland, CO 80537.

[24] Wershaw, R.L., et al, "Methods for Analysis of Organic Substances in Water," Techniques of Water-Resources Investigation of the U.S. Geological Survey, Book 5, Chapter A3, (1972 Revised 1987) p. 14.

[25] Nitrogen, Nitrite, Method 8507, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

[26] Just prior to distillation, adjust the sulfuric-acid-preserved sample to pH 4 with 1 + 9 NaOH.

[27] The approved method is cited in Standard Methods for the Examination of Water and Wastewater, 14th Edition. The colorimetric reaction is conducted at a pH of 10.0±0.2. The approved methods are given on pp 576-81 of the 14th Edition: Method 510A for distillation, Method 510B for the manual colorimetric procedure, or Method 510C for the manual spectrophotometric procedure.

[28] R.F. Addison and R.G. Ackman, "Direct Determination of Elemental Phosphorus by Gas-Liquid Chromatography," Journal of Chromatography, vol. 47, No. 3, pp. 421-426, 1970.

[29] Approved methods for the analysis of silver in industrial wastewaters at concentrations of 1 mg/L and above are inadequate where silver exists as an inorganic halide. Silver halides such as the bromide and chloride are relatively insoluble in reagents such as nitric acid but are readily soluble in an aqueous buffer of sodium thiosulfate and sodium hydroxide to pH of 12. Therefore, for levels of silver above 1 mg/L, 20 mL of sample should be diluted to 100 mL by adding 40 mL each of 2 M $Na_2S_2O_3$ and NaOH. Standards should be prepared in the same manner. For levels of silver below 1 mg/L the approved method is satisfactory.

[30] The approved method is that cited in Standard Methods for the Examination of Water and Wastewater, 15th Edition.

[31] The approved method is that cited in Standard Methods for the Examination of Water and Wastewater, 13th Edition.

[32] Stevens, H.H., Ficke, J.F., and Smoot, G.F., "Water Temperature—Influential Factors, Field Measurement and Data Presentation", Techniques of Water-Resources Investigations of the U.S. Geological Survey, Book 1, Chapter D1, 1975.

[33] Zinc, Zincon Method, Method 8009, Hach Handbook of Water Analysis, 1979, pages 2-231 and 2-333, Hach Chemical Company, Loveland, CO 80537.

[34] "Direct Current Plasma (DCP) Optical Emission Spectrometric Method for Trace Elemental Analysis of Water and Wastes, Method AES0029," 1986—Revised 1991, Applied Research Laboratories, Inc., 24911 Avenue Stanford, Valencia, CA 91355.

TABLE 1C.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS

Parameter[1]	GC	EPA Method Number [2,7]			ASTM	Other
		GC/MS	HPLC	Standard methods 17th Ed.		
1. Acenaphthene	610	625, 1625	610	6410 B, 6440 B	D4657-87	
2. Acenaphthylene	610	625, 1625	610	6410 B, 6440 B	D4657-87	
3. Acrolein	603	[4] 604, 1624				
4. Acrylonitrile	603	[4] 624, 1624	610			
5. Anthracene	610	625, 1625	610	6410 B, 6440 B	D4657-87	
6. Benzene	602	624, 1624		6210 B, 6220 B		
7. Benzidine		[5] 625, 1625	605			Note 3, p.1.
8. Benzo(a)anthracene	610	625, 1625	610	6410 B, 6440 B	D4657-87	
9. Benzo(a)pyrene	610	625, 1625	610	6410 B, 6440 B	D4657-87	
10. Benzo(b)fluoranthene	610	625, 1625	610	6410 B, 6440 B	D4657-87	
11. Benzo(g,h,i)perylene	610	625, 1625	610	6410 B, 6440 B	D4657-87	
12. Benzo(k)fluoranthene	610	625, 1625	610	6410 B, 6440 B	D4657-87	
13. Benzyl chloride						Note 3, p.130: Note 6, p. S102.
14. Benzyl butyl phthalate	606	625, 1625		6410 B		
15. Bis(2-chloroethoxy) methane	611	625, 1625		6410 B		
16. Bis(2-chloroethyl) ether	611	625, 1625		6410 B		
17. Bis (2-ethylhexyl) phthalate	606	625, 1625		6410 B, 6230 B		
18. Bromodichloromethane	601	624, 1624		6210 B, 6230 B		
19. Bromoform	601	624, 1624		6210 B, 6230 B		
20. Bromomethane	601	624, 1624		6210 B, 6230 B		
21. 4-Bromophenylphenyl ether	611	625, 1625		6410 B		
22. Carbon tetrachloride	601	624, 1624		6230 B, 6410 B		Note 3, p.130.
23. 4-Chloro-3-methylphenol	604	625, 1625		6410 B, 6420 B		
24. Chlorobenzene	601, 602	624, 1624		6210 B, 6220 B		Note 3, p.130.
				6230 B		
25. Chloroethane	601	624, 1624		6210 B, 6230 B		
26. 2-Chloroethylvinyl ether	601	624, 1624		6210 B, 6230 B		

TABLE 1C.—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter[1]	GC	EPA Method Number [2,7]			ASTM	Other
		GC/MS	HPLC	Standard methods 17th Ed.		
27. Chloroform	601	624, 1624		6210 B, 6230 B		Note, p.130.
28. Chloromethane	601	624, 1624		6210 B. 6230 B		
29. 2-Chloronaphthalene	612	625, 1625		6410 B		
30. 2-Chlorophenol	604	625, 1625		6410 B, 6420 B		
31. 4-Chlorophenylphenyl ether	611	625, 1625		6410 B		
32. Chrysene	610	625, 1625	610	6410 B, 6440 B	D4657-87	
33. Dibenzo(a,h)anthracene	610	625, 1625	610	6410 B, 6440 B	D4657-87	
34. Dibromochloromethane	601	624, 1624		6210 B, 6230 B		
35. 1, 2-Dichlorobenzene	601,602,612	624,625,1625		6410 B, 6230 B, 6220 B		
36. 1, 3-Dichlorobenzene	601,602,612	624,625,1625		6410 B, 6230 B, 6220 B		
37. 1, 4-Dichlorobenzene	601,602,612	625,1624,1625		6410 B, 6230 B 6220B		
38. 3, 3-Dichlorobenzidine		625, 1625	605	6410 B		
39. Dichlorodifluoromethane	601			6230 B		
40. 1, 1-Dichloroethane	601	624, 1624		6230 B, 6210 B		
41. 1, 2-Dichloroethane	601	624, 1624		6230 B, 6210 B		
42. 1, 1-Dichloroethene	601	624, 1624		6230 B, 6210 B		
43. trans-1, 2-Dichloroethene	601	624, 1624		6230 B, 6210 B		
44. 2, 4-Dichlorophenol	604	625, 1625		6420 B, 6410 B		
45. 1, 2-Dichloropropane	601	624, 1624		6230 B, 6210 B		
46. cis-1, 3-Dichloropropene	601	624, 1624		6230 B, 6210 B		
47. trans-1, 3-Dichloropropene	601	624, 1624		6230 B, 6210 B		
48. Diethyl phthalate	606	625, 1625		6410 B		
49. 2, 4-Dimethylphenol	604	625, 1625		6420 B, 6410 B		
50. Dimethyl phthalate	606	625, 1625		6410 B		
51. Di-n-butyl phthalate	606	625, 1625		6410 B		
52. Di-n-octyl phthalate	606	625, 1625		6410 B		
53. 2, 3-Dinitrophenol	604	625, 1625		6420 B, 6410 B		
54. 2, 4-Dinitotoluene	609	625, 1625		6410 B		
55. 2, 6-Dinitrotoluene	609	625, 1625		6410 B		
56. Epichlorohydrin						Note 3, p.130 Note 6, p.S102.
57. Ethylbenzene	602	624, 1624		6220 B, 6210 B		
58. Fluoranthe	610	625, 1625	610	6410 B, 6440 B	D4657-87	
59. Fluorene	610	625, 1625	610	6410 B, 6440 B	D4657-87	
60. Hexachlorobenzene	612	625, 1625		6410 B		
61. Hexachlorobutadiene	612	625, 1625		6410 B		
62. Hexachlorocyclopentadiene	612	[5] 625, 1625		6410 B		
63. Hexachloroethane	616	625, 1625		6410 B		
64. Ideno (1,2,3-cd)pyrene	610	625, 1625	610	6410 B, 6440 B	D4657-87	
65. Isophorone	609	625, 1625		6410 B		
66. Methylene chloride	601	624, 1624		6230 B		Note 3, p.130.
67. 2-Methyl-4.6-dinitrophenol	604	625, 1625		6420 B, 6410 B		
68. Naphthalene	610	625, 1625	610	6410 B, 6440 B		
69. Nitrobenezene	609	625, 1625		6410 B	D4657-87	
70. 2-Nitrophenol	604	625, 1625		6410 B, 6420 B		
71. 4-Nitrophenol	604	625, 1625		6410 B, 6420 B		
72. N-Nitrosodimethylamine	607	625, 1625		6410 B		
73. N-Nitrosodi-n-propylamine	607	[5]625, 1625		6410 B		
74. N-Nitrosodiphenylamine	607	[5]625, 1625		6410 B		
75. 2,2-Oxybis(1-chloropropane)	611	625, 1625		6410 B		
76. PCB-1016	608	625		6410 B		Note 3, p.43
77. PCB-1221	608	625		6410 B		Note 3, p.43
78. PCB-1232	608	625		6410 B		Note 3, p.43
79. PCB-1242	608	625		6410 B		Note 3, p.43
80. PCB-1248	608	625				
81. PCB-1254	608	625		6410 B		Note 3, p.43
82. PCB-1260	608	625		6410 B, 6630 B		Note 3, p.43.
83. Pentachlorophenol	604	625, 1625		6410 B, 6630 B		Note 3, p.140.
84. Phenanthrene	610	625, 1625	610	6410 B, 6440 B	D4657-87	
85. Phenol	604	625, 1625		6420 B, 6410 B		
86. Pyrene	610	625, 1625	610	6410 B, 6440 B	D4657-87	
87. 2,3,7,8-Tetrachlorodibenzo-p-dioxin		[8]613				
88. 1,1,2,2-Tetrachlorcethane	601	624, 1624		6230 B, 6210 B		Note 3, p.130.
89. Tetrachloroethene	601	624, 1624		6230 B, 6210 B		Note 3, p.130.
90. Toluene	602	624, 1624		6210 B, 6220 B		
91. 1,2,4-Trichlorobenzene	612	625, 1625		6410 B		Note 3, p.130.
92. 1,1,1-Trichloroethane	601	624, 1624		6210 B, 6230 B		
93. 1,1,2-Trichloroethane	601	624, 1624		6210 B, 6230 B		Note 3, p.130.
94. Trichloroethene	601	624, 1624		6210 B, 6230 B		
95. Trichlorofluoromethane	601	624		6210 B, 6230 B		
96. 2,4,6-Trichlorophenol	604	625, 1625		6410 B, 6240 B		
97. Vinyl chloride	601	624, 1624		6210 B, 6230 B		

Table 1C notes:

[1] All parameters are expressed in micrograms per liter (μg/L).

[2] The full text of Methods 601–613, 624, 625, 1624, and 1625, are given at Appendix A, "Test Procedures for Analysis of Organic Pollutants," of this Part 136. The standardized test procedure to be used to determine the method detection limit (MDL) for these test procedures is given at Appendix B, "Definition and Procedure for the Determination of the Method Detection Limit" of this Part 136.

[3] "Methods for Benzidine: Chlorinated Organic Compounds, Pentachlorophenol and Pesticides in Water and Wastewater," U.S. Environmental Protection Agency, September, 1978.

[4] Method 624 may be extended to screen samples for Acrolein and Acrylonitrile. However, when they are known to be present, the preferred method for these two compounds is Method 603 or Method 1624.

[5] Method 625 may be extended to include benzidine, hexachlorocyclopentadiene, N-nitrosodiumethyamine, and N-nitrosodiphenylamine. However, when they are known to be present, Methods 605, 607, and 612, or Method 1625, are preferred methods for these compounds.

[5a] 625, Screening only.

[6] "Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency," Supplement to the Fifteenth Edition of Standard Methods for the Examination of Water and Wastewater (1961).

[7] Each analyst must make an initial, one-time demonstration of their ability to generate acceptable precision and accuracy with Methods 601–603, 624, 625, 1624, and 1625 (See Appendix A of this Part 136) in accordance with procedures each in section 8.2 of each of these Methods. Additionally, each laboratory, on and on-going bases must spike and analyze 10% (5% for Methods 624 and 625 and 100% for Methods 1624 and 1625) of all samples to monitor and evaluate laboratory data quality in accordance with sections 8.3 and 8.4 of these Methods. When the recovery of any parameter falls outside the warning limits, the analytical results for that parameter in the unspiked sample are suspect and cannot be reported to demonstrate regulatory compliance.

NOTE: These warning limits are promulgated as an "interim final action with a request for comments."

TABLE 1 D.—LIST OF APPROVED TEST PROCEDURES FOR PESTICIDES[1]

Parameter μg/L	EPA method number				Other
	Method	EPA[2,7]	Standard methods 17th Ed.	ASTM	
1. Aldrin	GC	608	6630 B & C	D3086-90	Note 3, p. 7; Note 4, p. 30.
	GC/MS	625	6410 B		
2. Ametryn	GC				Note 3, p. 83; Note 6, p. S68.
3. Aminocarb	TLC				Note 3, p. 94; Note 6, p. S16.
4. Atraton	GC				Note 3, p. 83; Note 6, p. S68.
5. Atrazine	GC				Note 3, p. 83; Note 6, p. S68.
6. Azinphos methyl	GC				Note 3, p. 25; Note 6, p. S51.
7. Barban	TLC				Note 3, p. 104; Note 6, p. S64.
8. α-BHC	GC	608	6630 B & C	D3086-90	Note 3, p. 7.
	GC/MS	625	6410 B		
9. β-BHC	GC	608	6630 C	D3086-90	
	GC/MS	625	6410 B		
10. δ-BHC	GC	608	6630 C	D3086-90	
	GC/MS	625	6410 B		
11. γ-BHC (Lindane)	GC	608	6630 B & C	D3086-90	Note 3, p. 7; Note 4, p. 30.
	GC/MS	625	6410 B		
12. Captan	GC		6630 B	D3086-90	Note 3, p. 7.
13. Carbryl	TLC				Note 3, p. 94; Note 6, p. S60.
14. Carbophenothion	GC				Note 4, p. 30; Note 6, p. S73.
15. Chlordane	GC	606	6630 B & C	D3086-90	Note 3, p. 7.
	GC-MS	625	6410 B		
16. Chloropropham	TLC				Note 3, p. 104; Note 6, p. S64.
17. 2,4-D	GC		6640 B		Note 3, p. 115; Note 4, p. 35.
18. 4,4'-D-DDD	GC	608	6630 B & C	D3086-90	Note 3, p. 7; Note 4, p. 30.
	GC-MS	625	6410B		
19. 4,4'-DDE	GC	608	6630 B & C	D3086-90	Note 3, p. 7; Note 4, p. 30.
	GC-MS	625	6410 B		
20. 4,4'-DDT	GC	608	6630 B & C	D3086-90	Note 3, p. 7; Note 4, p. 30.
	GC-MS	625	6410 B		
21. Demeton-O	GC				Note 3, p. 25; Note 6, p. S51.
22. Dementon-S	GC				Note 3, p. 25; Note 6, p. S51.
23. Diazinon	GC				Note 3, p. 25; Note 4, p. 30; Note 6, p. S51.
24. Dicamba	GC				Note 3, p. 115.
25. Dichlofenthion	GC				Note 4, p. 30; Note 6, p. S73.
26. Dichloran	GC		6630 B & C		Note 3, p. 7.
27. Dicofol	GC			D3086-90	
28. Dieldrin	GC	608	6630 B & C		Note 3, p. 7; Note 4, p. 30.

TABLE 1 D.—LIST OF APPROVED TEST PROCEDURES FOR PESTICIDES[1]—Continued

Parameter µg/L	EPA method number				Other
	Method	EPA[2,7]	Standard methods 17th Ed.	ASTM	
	GC-MS	625	6410 B		
29. Dioxathion	GC				Note 4, p. 30; Note 6, p. S73.
30. Disulfoton	GC				Note 3, p. 25; Note 6, p. S51.
31. Diuron	TLC				Note 3, p. 104; Note 6, p. S64.
32. Endosulfan I	GC	608	6630 B & C	D3086–90	Note 3, p. 7.
	GC-MS	[5] 625	6410 B		
33. Endosulfan II	GC	608	6630 B & C	D3086–90	Note 3, p. 7.
	GC-MS	[5] 625	6410 B		
34 Endosulfan Sulfate	GC	608	6630 C		
	GC-MS	625	6410 B		
35. Endrin	GC	608	6630 B & C	D3086–90	Note 3, p. 7; Note 4, p. 30.
	GC-MS	[5]625	6410 B		
36. Endrin aldehyde		GC	608		
37. Ethion	GC				Note 4, p. 30; Note 6, p. S73.
38. Fenuron	TLC				Note 3, p. 104; Note 6, p. S64.
39. Fenuron-TCA	TLC				Note 3, p. 104; Note 6, p. S64.
40. Heptachlor	GC	608	6630 B & C	D3086–90	Note 3, p. 7; Note 4, p. 30.
	GC/MS	625	6410 B		
41. Heptachlor epoxide	GC	608	6630 B & C	D3086–90	Note 3, p. 7; Note 4, p. 30; Note 6, p. S73.
	GC/MS	625	6410 b		
42. Isodrin	GC				Note 4, p. 30; Note 6, p. S73.
43. Linuron	GC				Note 3, p. 104; Note 6, p. S64.
44. Malathion	GC		6630 C		Note 3, p. 25; Note 4, p. 30; Note 6, p. S51.
45. Methiocarb	TLC				Note 3, p. 94; Note 6, p. S60.
46. Methoxychlor	GC		6630 B & C	D3086–90	Note 3, p. 7; Note 4, p. 30.
47. Mexacarbate	TLC				Note 3, p. 94; Note 6, p. S60.
48. Mirex	GC		6630 B & C		Note 3, p. 7.
49. Monuron	TLC				Note 3, p. 104; Note 6, p. S64.
50. Monuron	TLC				Note 3, p. 104; Note 6, p. S64.
51. Nuburon	TLC				Note 3, p. 104; Note 6, p. S64.
52. Parathion methyl	GC		6630 C		Note 3, p. 25; Note 4, p. 30.
53. Parathion ethyl	GC		6630 C		Note 3, p. 25.
54. PCNB	GC		6630 B & C		Note 3, p. 7.
55. Perthane	GC			D3086–90	
56. Prometron	GC				Note 3, p. 83; Note 6, p. S68.
57. Prometryn	GC				Note 3, p. 83; Note 6, p. S68.
58. Propazine	GC				Note 3, p. 83; Note 6, p. S68.
59. Propham	TLC				Note 3, p. 104; Note 6, p. S64.
60. Propoxur	TLC				Note 3, p. 94; Note 6, p. S60.
61. Secbumeton	TLC				Note 3, p. 83; Note 6, p. S68.
62. Siduron	TLC				Note 3, p. 104; Note 6, p. S64.
63. Simazine	GC				Note 3, p. 83; Note 6, p. S68.
64. Strobane	GC		6630 B & C		Note 3, p. 7.
65. Swep	TLC				Note 3, p. 104; Note 6, p. S64.
66. 2,4,5-T	GC		6640 B		Note 3, p. 115; Note 4, p. 35.
67. 2,4,5-TP (Silvex)	GC		6640 B		Note 3, p. 115

TABLE 1 D.—LIST OF APPROVED TEST PROCEDURES FOR PESTICIDES[1]—Continued

Parameter µg/L	EPA method number				Other
	Method	EPA[2,7]	Standard methods 17th Ed.	ASTM	
68. Terbuthylazine	GC				Note 3, p. 83; Note 6, p. S68.
69. Toxaphene	GC	608	6630 B & C	D3086-90	Note 3, p. 7; Note 4, p. 30.
	GC/MS	625	6410 B		
70. Trifluralin	GC		6630 B		Note 3, p. 7.

Table 1D Notes:

[1] Pesticides are listed in this table by common name for the convenience of the reader. Additional pesticides may be found under Table 1C, where entries are listed by chemical name.

[2] The full text of Methods 608 and 625 are given at appendix A. "Test Procedures for Analysis of Organic Pollutants," of this part 136. The standardized test procedure to be used to determine the method detection limit (MDL) for these test procedures is given at appendix B. "Definition and Procedure for the Determination of the Method Detection Limit", of this part 136.

[3] "Methods for Benzidine, Chlorinated Organic Compounds, Pentachlorophenol and Pesticides in Water and Wastewater," U.S. Environmental Protection Agency, September, 1978. This EPA publication includes thin-layer chromatography (TLC) methods.

[4] "Methods for Analysis of Organic Substances in Water and Fluvial Sediments," Techniques of Water-Resources Investigations of the U.S. Geological Survey, Book 5, Chapter A3 (1987).

[5] The method may be extended to include α-BHC, δ-BHC, endosulfan I, endosulfan II, and endrin, However, when they are known to exist, Method 608 is the preferred method.

[6] "Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency," Supplement to the Fifteenth Edition of Standard Methods for the Examination of Water and Wastewater (1981).

[7] Each analyst must make an initial, one-time, demonstration of their ability to generate acceptable precision and accuracy with Methods 608 and 625 (See appendix A of this part 136) in accordance with procedures given in section 8.2 of each of these methods. Additionally, each laboratory, on an on-going basis, must spike and analyze 10% of all samples analyzed with Method 608 or 5% of all samples analyzed with Method 625 to monitor and evaluate laboratory data quality in accordance with Sections 8.3 and 8.4 of these methods. When the recovery of any parameter falls outside the warning limits, the analytical results for that parameter in the unspiked sample are suspect and cannot be reported to demonstrate regulatory compliance. These quality control requirements also apply to the Standard Methods, ASTM Methods, and other Methods cited.

NOTE: These warning limits are promulgated as an "Interim final action with a request for comments."

TABLE IE.—LIST OF APPROVED RADIOLOGICAL TEST PROCEDURES

Parameter and units	Method	EPA [1]	Reference (method number or page)		
			Standard methods 17th Ed.	ASTM	USGS[2]
1. Alpha-Total, pCi per liter	Proportional or scintillation counter	900	703	D1943-81	pp. 75 and 78.[3]
2. Alpha-Counting error, pCi per liter	Proportional or scintillation counter	Appendix B	703	D1943-81	p. 79.
3. Beta-Total, pCi per	Proportional counter	900.0	703	D1890-81	pp. 75 and 78.[3]
4. Beta-Counting error, pCi	Proportional counter	Appendix B	703	D1890-81	p. 79.
5. (a) Radium Total pCi per liter	Proportional counter	903.0	705	D2460-70	
(b) ^{226}Ra, pCi per liter	Scintillation counter	903.1	706	D3454-79	p. 81.

Table IE Notes:

[1] "Prescribed Procedures for Measurement of Radioactivity in Drinking Water," EPA-600/4-80-032 (1980), U.S. Environmental Protection Agency, August 1980.

[2] Fishman, M.J. and Brown, Eugene, "Selected Methods of the U.S. Geological Survey of Analysis of Wastewaters," U.S. Geological Survey, Open-File Report 76-177 (1976).

[3] The method found on p. 75 measures only the dissolved portion while the method on p. 78 measures only the suspended portion. Therefore, the two results must be added to obtain the "total".

(b) The full texts of the methods from the following references which are cited in Tables IA, IB, IC, ID, and IE are incorporated by reference into this regulation and may be obtained from the sources identified. All costs cited are subject to change and must be verified from the indicated sources. The full texts of all the test procedures cited are available for inspection at the Environmental Monitoring Systems Laboratory, Office of Research and Development, U.S. Environmental Protection Agency, 26 West Martin Luther King Dr., Cincinnati, OH 45268 and the Office of the Federal Register, room 8301, 1110 L Street, NW., Washington, DC 20408.

References, Sources, Costs, and Table Citations:

(1) The full text of Methods 601–613, 624, 625, 1624, and 1625 are printed in appendix A of this part 136. The full text for determining the method detection limit when using the test procedures is given in appendix B of this part 136. The full text of Method 200.7 is printed in appendix C of this part 136. Cited in: Table IB, Note 5; Table IC, Note 2; and Table ID, Note 2.

(2) "Microbiological Methods for Monitoring the Environment, Water and Wastes," U.S. Environmental Protection Agency, EPA–600/8–78–017, 1978. Available from: ORD Publications, CERI, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268. Table IA, Note 2.

(3) "Methods for Chemical Analysis of Water and Wastes," U.S. Environmental Protection Agency, EPA–600/4–79–020, March 1979, or "Methods for Chemical Analysis of Water and Wastes," U.S. Environmental Protection Agency, EPA–600/4–79–020, Revised March 1983. Available from: ORD Publications, CERI, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268, Table IB, Note 1.

(4) "Methods for Benzidine, Chlorinated Organic Compounds, Pentachlorophenol and Pesticides in Water and Wastewater," U.S. Environmental Protection Agency, 1978. Available from: ORD Publications, CERI, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268, Table IC, Note 3; Table D, Note 3.

(5) "Prescribed Procedures for Measurement of Radioactivity in Drinking Water," U.S. Environmental Protection Agency, EPA–600/4–80–032, 1980. Available from: ORD Publications, CERI, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268, Table IE, Note 1.

(6) "Standard Methods for the Examination of Water and Wastewater," Joint Editorial Board, American Public Health Association, American Water Works Association, and Water Pollution Control Federation, 17th Edition, 1989. Available from: American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20036. Cost: $90.00. Tables IA, IB, and IE.

(7) Ibid, 15th Edition, 1980. Table IB, Note 30; Table ID.

(8) Ibid, 14th Edition, 1975. Table IB, Notes 17 and 27.

(9) Ibid, 13th Edition, 1971. Table IB, Note 31.

(10) "Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency," Supplement to the 15th Edition of Standard Methods for the Examination of Water and Wastewater, 1981. Available from: American Public Health Association, 1015 Fifteenth Street NW., Washington, DC 20036. Cost available from publisher. Table IB, Note 10; Table IC, Note 6; Table ID, Note 6.

(11) "Annual Book of Standards—Water," Section 11, Parts 11.01 and 11.02, American Society for Testing and Materials, 1991. 1916 Race Street, Philadelphia, PA 19103. Cost available from publisher. Tables IB, IC, ID, and IE.

(12) "Methods for Collection and Analysis of Aquatic Biological and Microbiological Samples," edited by Britton, L.J. and P.E. Greason, Techniques of Water Resources Investigations, of the U.S. Geological Survey, Book 5, Chapter A4 (1989). Available from: U.S. Geological Survey, Denver Federal Center, Box 25425, Denver, CO 80225. Cost: $9.25 (subject to change). Table IA.

(13) "Methods for Determination of Inorganic Substances in Water and Fluvial Sediments," by M.J. Fishman and Linda C. Friedman, Techniques of Water-Resources Investigations of the U.S. Geological Survey, Book 5 Chapter A1 (1989). Available from: U.S. Geological Survey, Denver Federal Center, Box 25425, Denver, CO 80225. Cost: $108.75 (subject to change). Table IB, Note 2.

(14) "Methods for Determination of Inorganic Substances in Water and Fluvial Sediments," N.W. Skougstad and others, editors. Techniques of Water-Resources Investigations of the U.S. Geological Survey, Book 5, Chapter A1 (1979). Available from: U.S. Geological Survey, Denver Federal Center, Box 25425, Denver, CO 80225. Cost: $10.00 (subject to change), Table IB, Note 8.

(15) "Methods for the Determination of Organic Substances in Water and Fluvial Sediments," Wershaw, R.L., et al, Techniques of Water-Resources Investigations of the U.S. Geological Survey, Book 5, Chapter A3 (1987). Available from: U.S. Geological Survey, Denver Federal Center, Box 25425, Denver, CO 80225. Cost: $0.90 (subject to change). Table IB, Note 24; Table ID, Note 4.

(16) "Water Temperature—Influential Factors, Field Measurement and Data Presentation," by H.H. Stevens, Jr., J. Ficke, and G.F. Smoot, Techniques of Water-Resources Investigations of the U.S. Geological Survey, Book 1, Chapter D1, 1975. Available from: U.S. Geological Survey, Denver Federal Center, Box 25425, Denver, CO 80225. Cost: $1.60 (subject to change). Table IB, Note 32.

(17) "Selected Methods of the U.S. Geological Survey of Analysis of Wastewaters," by M.J. Fishman and Eugene Brown; U.S. Geological Survey Open File Report 76–77 (1976). Available from: U.S. Geological Survey, Branch of Distribution, 1200 South Eads Street, Arlington, VA 22202. Cost: $13.50 (subject to change). Table IE, Note 2.

(18) "Official Methods of Analysis of the Association of Official Analytical Chemicals", Methods manual, 15th Edition (1990). Price: $240.00. Available from: The Association of Official Analytical Chemists, 2200 Wilson Boulevard, Suite 400, Arlington, VA 22201. Table IB, Note 3.

(19) "American National Standard on Photographic Processing Effluents," April 2, 1975. Available from: American National Standards Institute, 1430 Broadway, New York, New York 10018. Table IB, Note 9.

(20) "An Investigation of Improved Procedures for Measurement of Mill Effluent and Receiving Water Color," NCASI Technical Bulletin No. 253, December 1971. Available from: National Council of the Paper Industry for Air and Stream Improvements, Inc., 260 Madison Avenue, New York, NY 10016. Cost available from publisher. Table IB, Note 18.

(21) Ammonia, Automated Electrode Method, Industrial Method Number 379–75WE, dated February 19, 1976. Technicon Auto Analyzer II. Method and price available from Technicon Industrial Systems, Tarrytown, New York 10591. Table IB, Note 7.

(22) Chemical Oxygen Demand, Method 8000, Hach Handbook of Water Analysis, 1979. Method price available from Hach Chemical Company, P.O. Box 389, Loveland, Colorado 80537. Table IB, Note 14.

(23) OIC Chemical Oxygen Demand Method, 1978. Method and price available from Oceanography International Corporation, 512 West Loop, P.O. Box 2980, College Station, Texas 77840. Table IB, Note 13.

(24) ORION Research Instruction Manual, Residual Chlorine Electrode Model 97–70, 1977. Method and price available from ORION Research Incorporation, 840 Memorial Drive, Cambridge, Massachusetts 02138. Table IB, Note 16.

(25) Bicinchoninate Method for Copper. Method 8506, Hach Handbook of Water Analysis, 1979, Method and price available from Hach Chemical Company, P.O. Box 300, Loveland, Colorado 80537. Table IB, Note 19.

(26) Hydrogen Ion (pH) Automated Electrode Method, Industrial Method Number 378–75WA. October 1976. Bran & Luebbe (Technicon) Auto Analyzer II. Method and price available from Bran & Luebbe Analyzing Technologies, Inc. Elmsford, N.Y. 10523. Table IB, Note 21.

(27) 1,10-Phenanthroline Method using FerroVer Iron Reagent for Water, Hach Method 8008, 1980. Method and price available from Hach Chemical Company, P.O. Box 389 Loveland, Colorado 80537. Table IB, Note 22.

(28) Periodate Oxidation Method for Manganese, Method 8034, Hach Handbook for Water Analysis, 1979. Method and price available from Hach Chemical Company, P.O. Box 389, Loveland, Colorado 80537. Table IB, Note 23.

(29) Nitrogen, Nitrite—Low Range, Diazotization Method for Water and Wastewater, Hach Method 8507, 1979. Method and price available from Hach Chemical Company, P.O. Box 389, Loveland, Colorado 80537. Table IB, Note 25.

(30) Zincon Method for Zinc, Method 8009. Hach Handbook for Water Analysis, 1979. Method and price available from Hach Chemical Company, P.O. Box 389, Loveland, Colorado 80537. Table IB, Note 33.

(31) "Direct Determination of Elemental Phosphorus by Gas-Liquid Chromatography," by R.F. Addison and R.G. Ackman, Journal of Chromatography, Volume 47, No. 3, pp. 421–426, 1970. Available in most public libraries. Back volumes of the Journal of Chromatography are available from Elsevier/North-Holland, Inc., Journal Information Centre, 52 Vanderbilt Avenue, New York, NY 10164. Cost

available from publisher. Table IB, Note 28.

(32) "Direct Current Plasma (DCP) Optical Emission Spectrometric Method for Trace Elemental Analysis of Water and Wastes, Method AES0029," 1986, revised 1991, (with appendix), Applied Research Laboratories, Inc., 24911 Avenue Stanford, Valencia, CA 91355. Table IB, Note 34.

(c) Under certain circumstances the Regional Administrator or the Director in the Region or State where the discharge will occur may determine for a particular discharge that additional parameters or pollutants must be reported. Under such circumstances, additional test procedures for analysis of pollutants may be specified by the Regional Administrator, or the Director upon the recommendation of the Director of the Environmental Monitoring Systems Laboratory—Cincinnati.

(d) Under certain circumstances, the Administrator may approve, upon recommendation by the Director, Environmental Monitoring Systems Laboratory—Cincinnati, additional alternate test procedures for nationwide use.

(e) Sample preservation procedures, container materials, and maximum allowable holding times for parameters cited in Tables IA, IB, IC, ID, and IE are prescribed in Table II. Any person may apply for a variance from the prescribed preservation techniques, container materials, and maximum holding times applicable to samples taken from a specific discharge. Applications for variances may be made by letters to the Regional Administrator in the Region in which the discharge will occur. Sufficient data should be provided to assure such variance does not adversely affect the integrity of the sample. Such data will be forwarded, by the Regional Administrator, to the Director of the Environmental Monitoring Systems Laboratory—Cincinnati, Ohio for technical review and recommendations for action on the variance application. Upon receipt of the recommendations from the Director of the Environmental Monitoring Systems Laboratory, the Regional Administrator may grant a variance applicable to the specific charge to the applicant. A decision to approve or deny a variance will be made within 90 days of receipt of the application by the Regional Administrator.

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Tuesday
October 8, 1991

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 961

Public and Indian Housing Youth Sports Program; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public And Indian Housing

24 CFR Part 961

[Docket No. R-91-1555; FR-2993-P-01]

RIN 2577-AA98

Public and Indian Housing Youth Sports Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This rule establishes the Public and Indian Housing Youth Sports Program (YSP) in accordance with section 520 of the Cranston-Gonzalez National Affordable Housing Act (NAHA), approved November 28, 1990, Public Law 101-625. The program authorizes HUD to make grants to States; units of general local government; local park and recreation districts and agencies; public housing agencies (PHAs); nonprofit organizations providing youth sports services programs; Indian tribes; and Indian housing authorities (IHAs) to carry out youth sports programs in public and Indian housing projects with substantial drug problems. Grant funds, which must be matched at least 50 percent with funds from non-Federal sources, may be used to assist in carrying out a public housing youth sports program in any of the following manners:

(1) Acquisition, construction, or rehabilitation of community centers, parks, or playgrounds.

(2) Redesigning or modifying public spaces in public housing projects to provide increased utilization of the areas by youth sports programs.

(3) Provision of public services, including salaries and expenses for staff of youth sports programs, cultural activities, educational programs relating to drug abuse, and sports and recreation equipment.

DATES: Comment Due Date: December 9, 1991.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708-4337. Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk ((202) 708-2084). (These are not toll-free numbers.)

FOR FURTHER INFORMATION CONTACT: Jose Marquez or Malcolm Main, Drug Free Neighborhoods Division, Office of Resident Initiatives, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., room 10241, Washington, DC 20410, telephone (202) 708-1197 or 708-3502. A telecommunications device for deaf persons (TDD) is available at (202) 708-0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Background

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1980. Pending approval of these requirements by OMB and the assignment of an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements. Upon approval by OMB, a Notice containing the OMB approval number will be published in the **Federal Register.**

Public reporting burden for the collection of information requirements contained in this proposed rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters.* Send comments regarding this burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3001, Washington, DC 20503, Attention: Jennifer Main, Desk Officer for HUD. At the end of the public comment period, the Department may amend the information collection requirements to reflect the public comments received concerning the collection of information requirements.

Section 520 of NAHA authorizes the establishment of the Youth Sports Program (YSP), to be funded by five percent of any amounts appropriated for the Drug Elimination Program (DEP) established in accordance with the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et seq.*). Implementing regulations for DEP were issued by HUD at 55 FR 27598 (July 3, 1990) and codified at 24 CFR part 961. NAHA, in section 581, also expanded and revised the Drug Elimination Program. To implement the NAHA changes in DEP that affect public and Indian Housing, HUD is amending part 961 in a separate rulemaking (56 FR 30176, July 1, 1991). Since the Youth Sports Program is closely related to the Drug Elimination Program at part 961 (the funding of YSP is a percentage of the amount appropriated for DEP, and program requirements and objectives of the two programs overlap), the YSP regulations are being established as subpart E of part 961. The revision of the Drug Elimination Program at part 961 is deleting subpart D, the Mini-Grants component, and replacing it with the grant administration component that is currently subpart E. These changes make subpart E available for the YSP regulations.

Because of the close relationship between DEP and YSP, the requirements of both programs will be made to conform to the greatest extent possible. HUD believes that this conformity is intended by section 520 of NAHA, the authorizing statute for YSP. Furthermore, conformity in the two programs will result in a more coordinated and consistent approach to the problem of drug-related crime in public and Indian housing projects. A consistent approach will also reduce the paperwork burden on many applicants, since the preparation of an application for one of these programs will provide much of the necessary information for an application for the other.

A basic component of a Drug Elimination Program application is the plan prepared in accordance with 24 CFR 961.15. HUD has determined that this plan would be an appropriate vehicle to use in meeting many of the

application requirements of the Youth Sports Program, despite differences between YSP and DEP.

A significant difference between the Drug Elimination and Youth Sports programs is the entities that are eligible to apply for funding. The Drug Elimination Program was originally available only to PHAs and IHAs, entities involved in the day-to-day management of public housing. Because of this day-to-day involvement, PHAs and IHAs possess an intimate knowledge of the operation and problems of public housing. NAHA expanded the list of eligible entities for DEP to include owners of federally assisted low-income housing. However, this change will not affect DEP at part 961 because part 961 will continue to apply only to public housing.

Under the Youth Sports Program, PHAs and IHAs are only two of seven entities eligible for funding. The other eligible entities are: States; units of general local government; local park and recreation districts and agencies; nonprofit organizations providing youth sports services programs; and Indian tribes. These other entities, with the exception of Resident Councils (RCs) or Resident Management Corporations (RMCs), which would be eligible applicants as nonprofit organizations, cannot be expected to possess the same depth of knowledge of the operation and problems of public housing as PHAs and IHAs.

Despite the difference in eligible applicants, the two programs, Drug Elimination and Youth Sports, must still be made to follow a consistent approach. The area that provides the greatest opportunity to coordinate the two programs is in the statutory requirement of each program for a plan to address the problem of drug-related crime in public housing.

Section 520(c)(2)(C) of NAHA requires that the "sports program shall be operated as, in conjunction with, or in furtherance of, an organized program or plan designed to eliminate drugs and drug-related problems in the public housing project or projects within the public housing agency." The Drug Elimination Program has a statutory requirement (section 5125(a) of the Public and Assisted Housing Drug Elimination Act of 1990) that applicants include a plan for addressing the problem of drug-related crime on the housing premises for which the application is being submitted. Activities under either program must be carried out in the context of a plan that addresses drug-related problems in public housing.

The elements that must be included in the plan required under the Drug Elimination Program have already been developed and implemented at 24 CFR 961.15(b). Among the elements are an assessment of the drug-related crime problem on the premises for which funding is sought; a description of activities and initiatives to address the problem; and a description of the involvement of residents, resident organizations, the local community and local government in the design and implementation of the plan.

Because YSP activities must be operated as, in conjunction with, or in furtherance of, a plan to eliminate drug-related problems, HUD has determined it would be appropriate to permit an applicant for YSP funding to use a DEP plan prepared in accordance with the 24 CFR 961.15(b) to satisfy this requirement, since the elements necessary to address drug-related issues are already provided for in the DEP plan. A Youth Sports Program applicant may submit either a current-year plan as prepared for a Drug Elimination Program grant application—thereby avoiding the burden of preparing yet another plan; or an abbreviated version of this 24 CFR 961.15 plan, as specified in this rule—thereby avoiding the burden of preparing a full-blown DEP plan. This approach will coordinate the anti-drug efforts under the Youth Sports and Drug Elimination Programs. It will also foster close cooperation between PHAs, IHAs, and the other eligible applicants for YSP funding because close cooperation with a PHA or IHA will be essential for other eligible applicants to put together a plan or make use of an already existing plan that had been prepared in conjunction with a DEP application. HUD considers this cooperation to be essential for effective program activities.

Under this approach, where a plan in accordance with § 961.15 has been prepared for a housing site by an IHA or PHA, the proposal of an applicant for Youth Sports Program funding must indicate in what way it will be operated as, in conjunction with, or in furtherance of, that plan. This procedure will ensure that a consistent approach in the Youth Sports and Drug Elimination programs is being followed. It will also encourage consultations between applicants who are not PHAs or IHAs and the PHA or IHA that the applicant's proposal is intended to assist. The non-PHA/IHA applicant will benefit from these consultations by forming bonds of cooperation with a PHA or IHA at the very beginning of the application process, and by tapping into the PHA's or IHA's knowledge of public housing operation and problems. HUD strongly believes that where these cooperative bonds cannot or will not be developed, the chances of developing and implementing an effective program activity are very low. Where the application is a joint effort, consisting of the plan prepared by the PHA or IHA in accordance with the Drug Elimination Program and the specific activity proposed for funding by the non-PHA/IHA Youth Sports applicant, the chances of a successful program activity are greatly increased.

Conversely, HUD believes that where an IHA or PHA is the applicant for YSP funding, it should be required to identify and consult with another YSP-eligible entity that is knowledgeable in the operation of the kind of sports, cultural, recreational or other activity for which the application is being prepared. The benefits of the consultation process in which each party contributes its knowledge and experience is expected to lead to more effective program activities and more efficient use of program funds. These consultations may further assist the PHA or IHA in finding sources of non-Federal matching funds, a requirement under the Youth Sports Program, since the entity with which the PHA or IHA consults may have, or be knowledgeable of sources of, funding for the type of activity proposed.

This rule will also require consultations between applicants and local resident groups, RMCs and RCs. These consultations are desirable to obtain the residents' valuable input on any proposed activity. In addition, applicants' consultations with RMCs/RCs will satisfy one of the selection criteria of section 520 of NAHA, which requires, "coordination of proposed activities with local resident management groups or associations (where such groups exist)."

Instances in which a PHA or IHA has already prepared a plan in accordance with § 961.15 represent the easiest and most straightforward application process for YSP funding. Whether or not a PHA or IHA that has submitted a DEP application has received DEP funding, the plan prepared for the DEP application can be used by it or, with its permission, another qualified applicant consulting with the PHA or IHA in a YSP application. HUD has determined that because of the benefits of this procedure, an applicant may submit either a plan prepared in accordance with 24 CFR 961.15, or an abbreviated version of such a plan as specified in § 961.58(a)(7) of this rule.

Use of this plan will result in a uniform, consistent approach for both

the Drug Elimination and Youth Sports Programs, focus the nature and extent of the drug problem to be addressed, and coordinate the efforts of the many parties who must be involved for a successful effort. The use of this plan would also satisfy many of the statutory requirements of the Youth Sports Program, as discussed below.

Among the statutorily required selection criteria for YSP is one that considers "the extent of the support of the public housing agency for the program, coordination of proposed activities with local resident management groups or associations (where such groups exist) and coordination of proposed activities with ongoing programs of the applicant that further the purposes of this section." The successful integration of the proposed YSP activity with a § 961.15 or alternate permitted plan would directly address this selection criterion, since the plan requires the applicant to describe the coordination efforts that have been made with these groups. A non-PHA/IHA applicant's public housing agency support would be demonstrated by the extent of the PHA/IHA's assistance in preparing a plan or sharing an already prepared plan.

The use of a plan will also permit the Department to make the threshold eligibility determination required by section 520(c)(1) of NAHA. This section of NAHA permits grants for youth sports programs only with respect to public housing sites determined to have a substantial problem regarding the use or sale of illegal drugs. The portion of the plan that requires a description of the extent of the drug-related crime problem in the housing projects proposed for assistance would provide the information necessary for this determination.

As discussed above, the statute requires that the activity applied for must be operated as, in conjunction with, or in furtherance of, an organized program or plan. A § 961.15 plan or the alternate plan as described in this rule will be used to fulfill this requirement.

For all of the above reasons, applicants for Youth Sports Program funding will be required to submit a plan prepared in accordance with 24 CFR 961.15, or an abbreviated version of a 24 CFR 961.15 plan as specified in § 961.58(a)(7) of this rule, as a part of their application. In addition to satisfying statutory requirements, this approach will make PHA and IHA applicants focus their anti-drug efforts even if they are not applying for a separate grant under the Drug Elimination Program. On the other hand, preparation of a § 961.15 plan, or an abbreviated plan, will require non-PHA/IHA applicants to work very closely with the PHA or IHA that their application is intended to assist, thereby giving those applicants a far greater appreciation of the nature of the problem to be addressed, and a much better sense of effective solutions that can be developed.

To further improve the quality of activities funded under this program, applicants will have an opportunity to discuss their applications and plans after each round of funding is completed with the Drug Information Clearinghouse. This service is the same as is extended under the Drug Elimination Program.

Many of the Youth Sports Program requirements are mentioned above in the context of the plan to be submitted as part of the program application. The following discussion focuses on other significant aspects of the rule.

Although this program is entitled "Youth Sports", the range of activities to be conducted for the benefit of young people from public and Indian housing projects is not limited to purely athletic events. Section 520(c)(2)(B) of NAHA makes sports, cultural, recreational, or "other" activities eligible program activities, as long as they are "designed to appeal to youth as alternatives to the drug environment" in public or Indian housing projects. Organized team sports; arts and crafts classes; field trips; ethnic heritage awareness activities; music, drama, and dance instruction and performances; home economics and family life classes; youth leadership skills development programs; language or job skills tutoring; all are representative of the kinds of eligible activities under the Youth Sports Program.

The program requirements also call for the involvement of local sports organizations or figures, but in this context too, "sports" carries the broad connotations outlined above. Athletes, coaches, artists, entertainers, and teachers; sports clubs, dance or drama troupes, music companies, and educational societies; these are representative of the individuals and organizations whose involvement Youth Sports applicants must seek depending on the type of activities proposed for funding.

Section 520(e)(1) of NAHA requires YSP grant applicants to certify that grant funds will be supplemented with matching funds from non-Federal sources that equal at least 50 percent of the grant amount. This requirement means that grant applicants must have committed to their Youth Sports activities at least one dollar of qualified matching funds for every two dollars of grant funds requested. For example, if an applicant is requesting $100,000 in YSP funds, the applicant must have commitments of at least $50,000 in qualified matching funds.

The qualified matching funds must consist of "funds from non-Federal sources," which, section 520(e)(2) of the statute explains, "includes funds from States, units of general local governments, or agencies of such governments, Indian tribes, private contributions, any salary paid to staff to carry out the youth sports program of the recipient, the value of the time and services contributed by volunteers to carry out the program of the recipient at a rate determined by the Secretary, the value of any donated material, equipment, or building, and the value of any lease on a building."

This wide-ranging definition of funds from non-Federal sources provides a great deal of flexibility for applicants in meeting the matching funds requirement of the Youth Sports Program. Not only dollar amounts, but the value of goods and services contributed to the applicant for youth sports activities are eligible to satisfy this program requirement. The question of determining the value to be assigned to donated goods and services has been left by the statute to the Department.

HUD has determined that with regard to salary paid to staff to carry out the Youth Sports activities of the applicant, only that portion of staff salaries representing time that will actually be spent on new and additional duties directly involved with Youth Sports activities may qualify as funds from non-Federal sources. For example, if a staff member will be spending thirty percent of his or her time on new and additional Youth Sports Program activities and the remaining seventy percent on other duties, only thirty percent of the salary will count as funds from non-Federal sources. If an employee's salary is paid with Youth Sports funds, it does not qualify as funds from non-Federal sources.

In instances where a volunteer performs a service that is to be valued towards the matching funds from non-federal sources, the value of time and services contributed by volunteers is to be computed on the basis of five dollars per hour, except where professional services or special training are involved. Where the volunteer is a professional or a person with special training performing a service directly related to the profession or special training, the value of the service is to be computed on the basis of the usual and customary

hourly rate paid for the service in the community where the Youth Sports activity or facility is located. The issue of valuing volunteer labor has arisen in other contexts, most recently under the HOPE grant programs, and this program follows a consistent approach.

Where goods are donated to the applicant for Youth Sports Program activities, their value will be based on their fair market value at the time of the donation as documented by bills of sale, advertised prices, or appraisals of identical or similar items. Although value is measured at the time of the donation, supporting documentation may be used that is up to, but no more than, one year old.

Similarly, the value of any building lease is to be based on its fair market value as evidenced by existing, or no more than one year old, leases, advertising, or appraisals of the building involved or a similar building similarly situated.

The application requirements in this rule are taken directly from the authorizing legislation. Any additional information related to these requirements that the Department will need for processing applications will be included in the Notices of Funding Availability (NOFAs) issued for this program.

Section 520(h) of NAHA requires grant recipients under this program to submit to the Department a report, within 90 days of fully expending grant funds, that describes the activities carried out with the grant. This section evidences a clear Congressional concern for accountability that program funds be spent as intended. The Department has additional accountability concerns regarding this program because the eligible applicants include entities that, unlike IHAs and PHAs, are not subject to regular HUD audits and controls. To ensure that program funds are being appropriately directed by grant recipients, and to provide an opportunity to address and correct any program problems a recipient may be experiencing, this rule adopts a monitoring approach modeled after the one followed in the Drug Elimination Program. Grantees will be required to submit a progress report 120 days after their Youth Sports program budgets have been approved, and a post-grant evaluation within 90 days after completion of the grant.

Other Matters

Executive Order 12291. This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Environmental Impact. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under the Order. This rule gives an incentive and provides funding to offer youth in public housing developments with substantial drug problems a positive alternative to drug activity. It will not have substantial, direct effects on States, on their political subdivisions, or on their relationships with the Federal government, or on the distribution of power and responsibilities between them and other levels of government.

Family Impact. The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule will not have a potentially significant negative impact on family formation, maintenance, and general well-being, and thus, is not subject to review under the Order. To the contrary, the rule will benefit family life by providing youth with wholesome alternatives to drug activities that are destructive of family life.

This proposed rule was listed as Item No. 1394 in the Department's Semiannual Agenda of Regulations published on April 22, 1991 (56 FR 17360) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Program number has not been assigned.

The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Certain sections of this rule have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

Section of rule affected	No. of respondents	No. of respondents per response	Total annual responses	Hours per response	Total hours
961.58(a)	500	1	500	24	12,000
Total annual reporting burden					12,000

List of Subjects in 24 CFR Part 961

Drug abuse, Drug traffic control, Grant programs—Housing and community development, Grant programs—Indians, Grant programs—low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, title 24, chapter IX, part 961 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 961—PUBLIC HOUSING DRUG ELIMINATION PROGRAM

The authority citation for 24 CFR part 961 is revised to read as follows:

Authority: Sec. 5127, Public and Assisted Housing Drug Elimination Act of 1990 (42 U.S.C. 11901 et seq.); sec. 520, National Affordable Housing Act (approved November 28, 1990, Pub. L. 101–625); sec. 7(d),

Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Subpart E is revised to read as follows:

Subpart E—Public Housing Youth Sports Program

Sec.

Subpart E—Public Housing Youth Sports Program

§ 961.50 Purpose.

The purpose of the Public Housing Youth Sports Program is to:

(a) Provide positive sports, cultural, recreational, educational or other activities for youth from public and Indian housing projects as alternatives to the drug environment in those projects;

(b) Eliminate the involvement by youth from public and Indian housing in drug-related crime and in the use of illegal drugs;

(c) Encourage the cooperative efforts of States, units of local government, local parks and recreation districts and agencies, public housing agencies, non-profit organizations providing youth sports activities, Indian tribes, and Indian housing authorities to provide activities for youth designed to serve as alternatives to the drug environment in public and Indian housing.

(d) Make available Federal grants to be used in combination with funds from non-Federal sources to implement program activities for youth from public and Indian housing projects.

§ 961.51 Definitions.

As used in this subpart:

HUD or *Department* means the United States Department of Housing and Urban Development.

Indian Housing Authority has the meaning given in section 3(b)(11) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)).

Indian Tribe has the meaning given in section 102(a)(17) of the Housing and Community Development Act of 1974.

Nonprofit organizations means a duly incorporated not-for-profit organization that is an RMC/RC; or that is, or is affiliated with, a national or regional organization that provides sports, cultural, recreational, educational or other services specifically designed for youth; or that has at least two years of experience in providing sports, cultural, recreational, educational or other services specifically designed for youth.

Plan means a plan prepared in accordance with 24 CFR 961.58(a)(7).

Public Housing Agency has the meaning given in section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)).

Public Housing Project has the meaning given in section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)).

Qualified Entity means an entity eligible under 24 CFR 961.52 to apply for and receive a grant under this section.

Resident Council (RC) means an incorporated or unincorporated nonprofit organization or association that meets each of the following requirements:

(1) It must be representative of the residents it purports to represent;

(2) It may represent residents in more than one project or in all of the projects of a PHA or IHA, but it must fairly represent residents from each project that it represents;

(3) It must adopt written procedures providing for the election of specific officers on a regular basis (but at least once every three years);

(4) It must have a democratically elected governing board. The voting membership of the board must consist of residents of the project or projects that the resident organization or resident council represents.

Resident Management Corporation (RMC) means the entity that proposes to enter into, or that enters into, a management contract with a PHA under 24 CFR part 964 or a IHA under 24 CFR part 905, or with an IHA in accordance with the requirements of this part. The corporation must have each of the following characteristics:

(1) It must be a nonprofit organization that is incorporated under the laws of the State or Indian tribe in which it is located.

(2) It may be established by more than one resident organization or resident council, so long as each such organization or council:

(i) Approves the establishment of the corporation and;

(ii) Has representation on the Board of Directors of the corporation.

(3) It must have an elected Board of Directors.

(4) Its by-laws must require the Board of Directors to include representatives of each resident organization or resident council involved in establishing the corporation.

(5) Its voting members must be residents of the project or projects it manages.

(6) It must be approved by the resident council. If there is no council, a majority of the households of the project must approve the establishment of such an organization to determine the feasibility of establishing a corporation to manage the project.

(7) It may serve as both the resident management corporation and the resident council, so long as the corporation meets the requirements of part 964 or part 905 for a resident council. (In the case of a resident management corporation for an Indian Housing Authority, it may serve as both the RMC and the RC so long as the corporation meets the requirements of this part for a resident council.)

Sports Activities means sports, cultural, educational, recreational, or other activities designed to appeal to youth as alternatives to the drug environment in public or Indian housing projects.

State means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

Unit of General Local Government means any city, town, township, county, parish, village, or other general purpose political subdivision of a State.

Youth means a male or female not less than five, or not more than twenty-one, years old.

§ 961.52 Eligible applicants.

The following entities are eligible to apply for funding under the Youth Sports Program:

(a) *States.* (1) A State applicant shall consult with the PHA or IHA, and RMC/RC organizations where they exist, in whose housing project or projects the program to be assisted by the grant is operated. These consultations are for the purposes of:

(i) Preparing a plan for submission with the application; and

(ii) Cooperating in the design of a program that will provide positive sports, cultural, recreational, educational or other activities for youth from the housing project or projects to be assisted by the grant.

(b) *Units of general local or tribal government.* (1) An applicant that is a unit of general local or tribal government shall consult with the PHA or IHA, and RMC/RC organizations

where they exist, in whose housing project or projects the program to be assisted by the grant is operated. These consultations are for the purposes of:

(i) Preparing a plan for submission with the application; and

(ii) Cooperating in the design of a program that will provide positive sports, cultural, recreational, educational or other activities for youth from the housing project or projects to be assisted by the grant.

(c) *Local or tribal park and recreation districts and agencies.* (1) An applicant that is a local or tribal park and recreation district or agency shall consult with the PHA or IHA, and RMC/RC organizations where they exist, in whose housing project or projects the program to be assisted by the grant is operated. These consultations are for the purposes of:

(i) Preparing a plan for submission with the application; and

(ii) Cooperating in the design of a program that will provide positive sports, cultural, recreational, educational or other activities for youth from the housing project or projects to be assisted by the grant.

(d) *Public housing agencies (PHAs).* (1) In designing an activity for funding, an applicant that is a PHA shall consult with RMC/RC organizations, where they exist, and another entity eligible for funding under this program that has experience in designing and implementing sports, cultural, recreational, educational or other activities for youth.

(e) *Nonprofit organizations, including RMCs/RCs, providing youth sports activities programs.* (1) An applicant that is a nonprofit organization providing youth sports activities programs shall consult with the PHA or IHA in whose housing project or projects the program to be assisted by the grant is operated. An applicant that is not an an RMC/RC shall also consult with RMC/RC organizations where they exist. These consultations are for the purposes of:

(i) Preparing a plan for submission with the application; and

(ii) Cooperating in the design of a program that will provide positive sports, cultural, recreational, educational or other activities for youth from the housing project or projects to be assisted by the grant.

(f) *Indian tribes.* (1) An applicant that is an Indian tribe shall consult with the PHA or IHA, and RMC/RC organizations where they exist, in whose housing project or projects the program to be assisted by the grant is operated. These consultations are for the purposes of:

(i) Preparing a plan for submission with the application; and

(ii) Cooperating in the design of a program that will provide positive sports, cultural, recreational, educational or other activities for youth from the housing project or projects to be assisted by the grant.

(g) *Indian housing authorities (IHAs).* (1) In designing an activity for funding, an applicant that is an IHA shall consult with RMC/RC organizations, where they exist, and another entity eligible for funding under this program that has experience in designing and implementing sports, cultural, recreational, educational or other activities for youth.

§ 961.54 Threshold requirements for funding.

Every activity proposed for funding under the Youth Sports Program must satisfy each of the following requirements:

(a) The activity must be operated as, in conjunction with, or in furtherance of, an organized program or plan designed to eliminate drugs and drug-related problems in the public or Indian housing project or projects for which the activity is proposed.

(1) A plan prepared in accordance with 24 CFR 961.58(a)(7) shall be submitted by the applicant to satisfy the requirement of paragraph (a).

(b) The activity for which funding is sought must be conducted with respect to public or Indian housing sites that HUD determines have a substantial problem regarding the use or sale of illegal drugs.

(1) The determination required in paragraph (b) will be made by the Department on the basis of information submitted by the applicant in a plan prepared in accordance with 24 CFR 961.58(a)(7).

(c) The activities or facilities funded by Youth Sports grants must serve primarily youth from the public or Indian housing developments in which the activities or facilities are operated.

(d) Applicants must provide a workplan detailing a timeline for the implementation of Youth Sports activities and a budget for the Youth Sports activities.

(e) Applicants must be able to supplement the amount provided by a grant under the Youth Sports Program with an amount of funds from non-Federal sources equal to or greater than 50 percent of the amount provided by the grant.

(1) Funds from non-Federal sources are funds the applicant receives for the Youth Sports activities identified in its application from the following:

(i) States.

(ii) Units of general local government or agencies of such governments.

(iii) Indian tribes.

(iv) Private contributions.

(v) Any salary paid to staff to carry out the Youth Sports activities of the applicant.

(A) Only that portion of staff salaries representing time that will be spent on new and additional duties directly involved with Youth Sports activities may qualify as funds from non-Federal sources.

(B) Staff salaries that are paid with Youth Sports funds do not qualify as funds from non-Federal sources for the purpose of this program.

(vi) The value of the time and services contributed by volunteers to carry out the program of the grant recipient, to be determined as follows:

(A) Except as set out in paragraph (vi)(B) of this section, the value of time and services contributed by volunteers is to be computed on the basis of five dollars per hour;

(B) Where the volunteer is a professional or a person with special training performing a service directly related to the profession or special training, the value of the service is to be computed on the basis of the usual and customary hourly rate paid for the service in the community where the Youth Sports activity is located.

(vii) The value of any donated material, equipment, or building, computed on the basis of the fair market value of the donated item at the time of the donation.

(A) The applicant must document the fair market value of donated items by referencing bills of sale, advertised prices, or appraisals, not more than one year old and taken from the community where the item or the Youth Sports activity is located (whichever is more appropriate), of identical or comparable items.

(viii) The value of any lease on a building, or part of a building, computed on the basis of the fair market value of a lease for similar property similarly situated.

(A) The applicant must document the fair market value of a lease by referencing an existing, or no more than year old, lease from the building involved or evidence, such as advertisements or appraisals, of the value of leases for comparable buildings.

(f) Grant funds provided under this program and any State, tribal, or local funds used to supplement grant funds under this program may not be used to replace other public funds previously

used, or designated for use, for the purpose of this program.

§ 961.56 Eligible and ineligible activities.

Youth Sports Program funds may be used to assist in carrying out activities in any of the following manners:

(a) Acquisition, construction, or rehabilitation of community centers, parks, or playgrounds is an eligible activity under the Youth Sports Program.

(1) Acquisition, construction or rehabilitation costs shall not be approved unless the applicant demonstrates the need for the type of facilities to be assisted by the grant.

(2) Facilities that receive Youth Sports funding must be used primarily for youth from the public or Indian housing developments in which the funded facility is operated.

(3) Facilities (community centers, parks, or playgrounds) acquired, constructed, or rehabilitated under this program must be on or immediately adjacent to the premises of the public housing project identified in the application for assistance under this program. In the case of Indian Housing Authorities, the applicant must specify how youth from IHA projects will have access to the facility, since IHAs often cover large areas.

(4) Facilities receiving Youth Sports funding must comply with any applicable local or tribal building requirements for recreational facilities

(5) Facilities receiving Youth Sports funding must be used exclusively for youth activities commensurate with the extent of the Youth Sports funding for the life of the facility, unless a waiver is obtained from HUD. For example, if a facility is funded 60 percent by a Youth Sports grant, then it must be used at least 60 percent for Youth Sports activities, unless a waiver is obtained from HUD.

(6) In accordance with the requirements of 24 CFR 8.21, facilities should be designed and constructed to be readily accessible to and usable by individuals with handicaps. Alterations to existing facilities shall, to the maximum extent feasible, be made readily accessible to and usable by individuals with handicaps.

(7) In accordance with the requirements of 24 CFR 8.20, no qualified applicant with handicaps shall, because a recipient's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefit of, be excluded from participation in, or otherwise be subjected to discrimination in the program.

(b) Redesigning or modifying public spaces in public or Indian housing projects to provide increased utilization of the areas by youth sports programs is an eligible activity under this program.

(1) The construction of sports facilities on public or Indian housing property to implement youth sports activities is permitted under this program. These facilities may include, but not be limited to, baseball diamonds, basketball courts, football fields, tutoring centers, swimming pools, soccer fields, public or Indian housing community centers, and tennis courts.

(c) Provision of public services, including salaries and expenses for staff of youth sports programs, cultural activities, educational programs relating to drug abuse, and sports and recreation equipment are eligible activities under this program.

(1) Educational programs for youth relating to illegal drug use are permitted under this section. The program must be formally organized and provide the knowledge and skills youth need to make informed decisions on the potential and immediate dangers of drug abuse and involvement with illegal drugs. Grantees may contract with drug education professionals to provide the appropriate training or workshops. These educational programs may be part of organized sports activities or other eligible youth activities.

(2) Activities providing an economic/educational orientation for Youth Sports Program participants are eligible for funding as public services. These activities must provide, for public or Indian housing youth, the opportunities for interaction with, or referral to, higher educational or vocational institutions, and develop the skills of program participants to pursue educational, vocational, and economic goals. These activities may also provide public or Indian housing youth the opportunity to interact with private sector businesses in their community with the purpose of promoting the development of educational, vocational, and economic goals in public or Indian housing youth.

(3) The cost of the initial purchase of sports and recreation equipment to be used by program participants is permitted under this program.

(4) Cultural and recreational activities, such as ethnic heritage classes, and art, dance, drama and music appreciation and instruction programs are eligible Youth Sports Program activities.

(5) Youth leadership skills training for program participants is permitted under this program. These activities must provide opportunities designed to involve public and Indian housing youth in peer leadership roles in the implementation of program activities, for example, as team or activity captains, counselors to younger program participants, assistant coaches, and equipment or supplies managers. Grantees may contract with youth trainers to provide services which may include training in peer pressure reversal, resistance or refusal skills, goal planning, parenting skills, and other relevant topics.

(6) Transportation costs directly related to Youth Sports activities (for example, leasing a vehicle to transport a Youth Sports team to a game) are eligible program expenses.

(7) The purchase of vehicles under this program is prohibited.

(8) Liability insurance costs directly related to Youth Sports activities are eligible program expenses.

§ 961.58 Application requirements.

(a) Each application for a grant under this program must include the following:

(1) Standard Grant Application Forms SF–424 and SF–424A with narrative showing breakdown by program and cost, to include all equipment.

(2) The following certifications, executed by the CEO of the applicant:

(i) A certification that the applicant will supplement the amount provided by a grant under this program with an amount of funds from non-federal sources equal to or greater than 50 percent of the amount provided by the grant;

(ii) A certification that the activities or facilities funded by the Youth Sports grant will serve primarily youth from the public or Indian housing projects in which the activities or facilities are operated;

(iii) A certification that facilities receiving Youth Sports funding comply with any applicable local or tribal building requirements for recreational facilities;

(iv) A certification that the applicant will maintain a drug-free workplace in accordance with the requirements of the Drug-Free Workplace Act of 1988, 24 CFR part 24, subpart F (Applicants may submit a copy of their most recent drug-free workplace certification, which must be dated within the past year.);

(v) A certification and disclosure in accordance with the requirements of Section 319 of the Department of the Interior Appropriations Act (Pub. L. 101–121, approved October 23, 1989), as implemented in HUD's interim final rule published in the **Federal Register** on February 26, 1990 (55 FR 6736) (This statute generally prohibits recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans from using appropriated funds for

lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific, contract, grant, or loan.);

(vi) A certification that grant funds provided under this program and any State, tribal, or local funds used to supplement grant funds under this program will not be used to replace other public funds previously used, or designated for use, for the purpose of this program.

(vii) A certification that the applicant has assessed its potential liability arising out of Youth Sports activities, has considered any limitations on liability under State, local or tribal law, and that, upon being notified of a Youth Sports grant award, the applicant will obtain adequate insurance coverage to protect itself against any potential liability arising out of the eligible activities under this program.

(viii) A certification that the applicant will comply with title VI of the Civil Rights Act of 1964 and section 504 of the Rehabilitation Act of 1973.

(3) A description of the nature of the services to be provided by the applicant's proposed Youth Sports Program, including an explanation of the way in which the activities or facilities proposed for funding address the particular needs of the area to be served by the program.

(4) A workplan with a task timeline providing an implementation schedule for the Youth Sports activities.

(5) A budget describing the financial and other resources committed to each activity and service of the program. The budget must identify the share of the costs of the applicant's Youth Sports activities provided by a grant under this program and the share of the costs provided from other sources of funds (e.g. local or tribal government, corporations, individuals.) including funds from non-Federal sources.

(6) A statement regarding the extent to which the applicant's proposed Youth Sports activities meet the criteria for selection in 24 CFR 961.60.

(7) A plan designed to eliminate drugs and drug-related problems on the premises of the housing projects proposed for funding. Applicants are given a choice to satisfy this requirement in one of two ways. First, an applicant may submit a current-year plan prepared for the housing projects in accordance with 24 CFR 961.15 as a part of a Drug Elimination Program grant. In this case, the applicant must indicate how its proposed Youth Sports activities will be operated as, in conjunction with, or in furtherance of the § 961.15 plan. The other choice is that an applicant may submit a plan prepared as follows:

(i) The plan must describe the drug-related problems in the projects that are proposed for funding under this program, using:

(A) Objective data, if available, from the local police precinct or the PHA's or IHA's records on the types, number and sources of drug-related crime in the projects proposed for assistance. If crime statistics are not available at the project or precinct level, the applicant may use other reliable, objective data including those derived from the records of Resident Management Corporations (RMCs), Resident Corporations (RCs), or other resident associations. The data should cover the past one-year period and, to the extent feasible, should indicate whether these data reflect a percentage increase or decrease in drug-related crime over the past several years.

(B) Information from other sources which have a direct bearing on drug-related problems in the projects proposed for assistance. Examples of these data are: resident/staff surveys on drug-related issues or on-site reviews to determine drug activity; vandalism costs and related vacancies attributable to drug-related crime; information from schools, health service providers, residents and police.

(ii) The plan must include a narrative discussion of the applicant's current activities, if any, to eliminate drug-related problems in the targeted projects. Any efforts being undertaken by community and governmental entities, residents of the project, Resident Management Corporations (RMCs), Resident Corporations, (RCs), other resident associations, or any other entities to address the drug-related problems in the projects proposed for assistance must be described. The applicant must also indicate how its proposed Youth Sports activities will be operated as, in conjunction with, or in furtherance of the other activities described in the plan.

(8) An estimate of the number of youth involved.

(9) A description of the facilities to be used in the applicant's Youth Sports program.

(10) A description of the organization of the applicant's proposed Youth Sports program, which must detail:

(i) The consultations entered into by the applicant with other entities experienced in the design and implementation of the type of proposed Youth Sports activities.

(A) A non-PHA/IHA applicant must include a description of its consultations with the PHA or IHA, and RMCs/RCs where they exist, whose project or projects are to be assisted by the program.

(B) A PHA, IHA or RMC/RC applicant must include a description of its consultations with another qualified entity consulted for its experience in designing and implementing sports, cultural, recreational, educational or other activities for youth. In addition, a PHA or IHA applicant must include a description of its consultations with RMCs/RCs, where they exist.

(11) A description of the extent of involvement of local sports organizations or sports figures.

(12) A description of plans and resources to continue the Youth Sports activities beyond the grant term under this program, including the commitment of entities (e.g., local and tribal governments, corporations, community organizations) and individuals to continue their involvement in the applicant's Youth Sports activities and facilities.

(13) Such additional information as the Department determines to be necessary and appropriate.

(b) *Notice of Funding Availability.* HUD will publish Notices of Funding Availability (NOFAs) in the **Federal Register** as appropriate to inform the public of the availability of grant amounts under this program. The Notices will provide specific guidance with respect to the grant process, including the deadlines for the submission of grant applications, the limits (if any) on maximum grant amounts, the maximum number of points to be awarded for each selection criterion, and the process for ranking and selecting applicants. The Notices will also include any additional factors that the Secretary has determined to be necessary and appropriate to implement the selection criteria in this subpart.

§ 961.60 Application selection.

Each application submitted by a qualified entity for a grant under this program will be evaluated on the basis of the following selection criteria:

(a) The extent to which the Youth Sports activities to be assisted with the grant addresses the particular needs of the area to be served by the activities and employs methods, approaches, or ideas in the design or implementation of the program particularly suited to fulfilling the needs (whether such methods are conventional or unique and innovative);

(b) The technical merit of the application of the qualified applicant;

(c) The qualifications, capabilities, and experience of the personnel and staff of the Youth Sports program who

are critical to achieving the objectives of the program as described in the application;

(d) The capabilities, related experience, facilities, and techniques of the applicant for carrying out its Youth Sports program and achieving the objectives of its program as described in the application, and the potential of the applicant for continuing the Youth Sports program;

(e) The severity of the drug problem at the local public or Indian housing site for the Youth Sports program and the extent of any planned or actual efforts to rid the site of the problem;

(f) The extent to which local sports organizations or sports figures are involved;

(g) The extent of the support of the PHA or IHA for the applicant's activities, coordination of proposed activities with local resident management groups or resident associations (where such groups exist) and coordination of proposed activities with ongoing programs of the applicant that further the purposes of the Youth Sports Program;

(h) The extent of non-Federal contributions that exceed the fifty percent amount of such funds required under 24 CFR 961.54(e);

(i) In the case of local park and recreation districts and agencies, and PHAs, the extent to which the applicant demonstrates local government support for the activities;

(j) Such additional factors as the Department determines to be necessary and appropriate.

§ 961.62 Grant administration.

(a) *General.* The duty to use grant funds to establish positive alternatives for youth in public housing projects with significant drug problems, in accordance with the requirements of this program, will be incorporated in a grant agreement executed by HUD and the grantee. Each grantee is responsible for ensuring that grant funds are administered in accordance with the requirements of this subpart and applicable laws and regulations.

(b) *Insurance.* Each grantee is required to obtain adequate insurance coverage to protect itself against any potential liability arising out of the eligible activities under this program. In particular, applicants are required to assess their potential liability arising out of Youth Sports activities involving physical activities that may lead to injuries; to evaluate the qualifications and training of the individuals or firms supervising and staffing the Youth Sports activities; and to consider any limitations on liability under State, local or tribal law. Subgrantees are required to obtain their own liability insurance.

(c) *Subgrants (Subcontracting).* A grantee may directly undertake any of the eligible activities under this program or it may contract with a qualified third party to undertake eligible activities.

(1) The grantee shall be responsible for monitoring, and for providing technical assistance to, any subgrantee to ensure compliance with HUD program requirements, including OMB Circular Nos. A–110 and A–122, which apply to the acceptance and use of assistance by private nonprofit organizations. The procurement requirements of Attachment O of Circular A–110 apply to RMCs and RCs. The grantee must also ensure that subgrantees have appropriate insurance liability coverage.

(d) *Employment preference.* A grantee under this program shall give preference to the employment of public housing residents, to carry out any of the eligible activities under this program, so long as such residents have comparable qualifications and training as non-public housing resident applicants. For Indian housing, the Indian preference in accordance with 25 U.S.C. 450(e) must be used first before resident preference may be allowed. Except where the labor standards requirements of § 961.66(a)(1) of this subpart are applicable, a public housing resident employed under this section may choose to receive compensation for his or her services either in the form of payment, as a credit to the resident's account, or as payment of back rent owed to the grantee.

(e) *Applicability of OMB Circular and HUD fiscal and audit controls.* The policies, guidelines, and requirements of 24 CFR part 85 and OMB Circular A–87 apply to the acceptance and use of assistance by grantees under this part; and OMB Circular Nos. A–110 and A–122 apply to the acceptance and use of assistance by private nonprofit organizations (including RMCs and RCs). In addition, grantees and subgrantees must comply with fiscal and audit controls and reporting requirements prescribed by HUD, including the system and audit requirements under the Single Audit Act, OMB Circular No. A–128 and HUD's implementing regulations at 24 CFR part 44); and OMB Circular No. A–133).

(f) *Grant term and obligation of grant funds.* Grantees are required to use grant amounts under this subpart according to their approved workplan, which generally shall not exceed 18 months.

(g) *Sanctions.* If HUD determines that a grantee is not complying with the requirements of this subpart or of other applicable Federal law, or if a grantee fails to make satisfactory progress as reflected in its periodic reports under § 961.64 of this subpart, or if a grantee files a false certification, for example, as to the required matching funds from non-Federal sources committed to Youth Sports activities, HUD may (in addition to any remedies that may otherwise be available) take any of the following sanctions, as appropriate:

(1) Issue a warning letter that further failure to comply with such requirements will result in a more serious sanction;

(2) Condition a future grant;

(3) Direct the grantee to stop the incurring of costs with grant amounts;

(4) Require that some or all of the grant amounts be remitted to HUD;

(5) Reduce the level of funds the grantee would otherwise be entitled to receive; or

(6) Elect not to provide future grant funds to the grantee until appropriate actions are taken to ensure compliance

§ 961.64 Periodic reports.

Grantees are required to provide periodic reports that include the obligation and expenditure of grant funds, the progress made by the grantee in implementing the Youth Sports activities described in the grant application and any change in the Youth Sports activities as described in the application.

(a) *Progress reports.* Grantees must provide HUD with progress reports that evaluate the grantee's progress in implementing its Youth Sports activities. These reports will be submitted, 120 calendar days after the grantee's Youth Sports Program budget has been approved, to the local HUD Field Office or Office of Indian Programs, as appropriate. These reports must also include in summary form a discussion of any change or lack of change in the Youth Sports activities funded, or in the number, age, sex, race, ethnicity, or public or Indian housing residency of the youth participating in the activities; successful implementation or completion of any of the activities identified in the application; a discussion of any problems encountered in implementing the activities and how they were addressed; a discussion of the grantee's efforts in encouraging public or Indian housing youth participation;.

(b) *Post-grant report.* A post-grant evaluation must be submitted to the local HUD Field Office or Office of Indian Programs, as appropriate, within 90 days after completion of the grant, describing the activities carried out with

the grant, the effect of the Youth Sports activities on the drug-related problems of the housing project or projects assisted by the grant, the total number of youth by age and sex that participated in the activities and the grantee's plans for continuing the activities.

§ 961.66 Other Federal requirements.

Use of grant funds requires compliance with the following additional Federal requirements:

(a) *Labor standards.* (1) Where grant funds are used for the construction or rehabilitation of facilities located in or on a public housing site, or the redesigning or modifying of public spaces in or on a public housing site, the following labor standards apply:

(i) The grantee and its contractors and subcontractors must pay the following prevailing wage rates, and must comply with all related rules, regulations and requirements:

(A) For laborers and mechanics employed in the activity, the wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trades;

(B) For laborers and mechanics employed in carrying out non-routine maintenance in the facility or public space, the HUD-determined prevailing wage rate. As used in this subsection, non-routine maintenance means work items that ordinarily would be performed on a regular basis in the course of upkeep of a property, but have become substantial in scope because they have been put off, and that involve expenditures that would otherwise materially distort the level trend of maintenance expenses. Work that constitutes reconstruction, a substantial improvement in the quality or kind of original equipment and materials, or remodeling that alters the nature or type of housing units is not non-routine maintenance.

(ii) The employment of laborers and mechanics is subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333).

(2) The provisions of paragraph (a)(1) of this section shall not apply to labor contributed under the following circumstances:

(i) Upon the request of any resident management corporation, HUD may, subject to applicable collective bargaining agreements, permit residents of a project managed by the resident management corporation to volunteer a portion of their labor;

(ii) A family selected for housing under the Indian Mutual Help Homeownership Opportunity Program may contribute labor toward the development cost of the project;

(iii) An individual may volunteer to perform services if:

(A) The individual does not receive compensation for the voluntary services, or, is paid expenses, reasonable benefits, or a nominal fee for voluntary services; and

(B) is not otherwise employed at any time in the work subject to (a)(1)(i)(A) or (B) of this section.

(b) *Environmental Review.* Before making an award of grant funds under this part, HUD will perform an environmental review to the extent required under the provisions of NEPA, applicable related authorities at 24 CFR 50.4, and HUD's implementing regulations at 24 CFR part 50.

(c) *Nondiscrimination and equal opportunity.* The following nondiscrimination and equal opportunity requirements apply to this program:

(1) The requirements of The Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations issued at 24 CFR part 100; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;

(i) In accordance with the requirements of 24 CFR 8.21, facilities acquired, constructed, or rehabilitated with program funds should be designed and constructed to be readily accessible to and usable by individuals with handicaps. Alterations to existing facilities shall, to the maximum extent feasible, be made readily accessible to and usable by individuals with handicaps;

(ii) In accordance with 24 CFR 8.20, no qualified individual with handicaps shall, because a recipient's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefit of, be excluded from participation in, or otherwise be subjected to discrimination in the program.

(3) The requirements of Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR chapter 60;

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects); and

(5) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

(d) *Use of debarred, suspended or ineligible contractors.* Use of grant funds under this program requires compliance with the provisions of 24 CFR part 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(e) *Flood insurance.* Grants will not be awarded for proposed projects that involve acquisition, construction, reconstruction, repair or improvement of a building or mobile home located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless:

(1)(i) The community in which the area is situated is participating in the National Flood Insurance Program in accordance with 44 CFR parts 59–79; or

(ii) Less than a year has passed since FEMA notification to the community regarding such hazards; and

(2) Flood insurance on the structure is obtained in accordance with Section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001).

(f) *Lead-based paint.* The provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4821–4846, and implementing regulations at 24 CFR part 965, subpart H (51 FR 27789–27791, August 1, 1986) apply to activities under this program as set out below. This section is promulgated pursuant to the authority granted in 24 CFR 35.24(b)(4) and supersedes, with respect to all housing to which it applies, the requirements (not including definitions) prescribed by subpart C of 24 CFR part 35.

1. *Applicability.* The provisions of this section shall apply to all projects constructed or substantially rehabilitated before January 1, 1978, and for which assistance under this program is being used for construction or rehabilitation of facilities or redesigning or modifying public spaces.

(2) *Definitions.* The term "applicable surfaces" means all intact and nonintact interior and exterior painted surfaces of a residential structure.

(3) *Exceptions.* The following activities are not covered by this section:

(i) Single-purpose programs that do not involve physical repairs or remodeling of applicable surfaces of residential structures; or

(ii) Any non-single purpose rehabilitation that does not involve applicable surfaces and that does not exceed $3,000 per unit.

(g) *Conflicts of Interest.* In addition to the conflict of interest requirements in 24 CFR part 85, no person, as described in paragraphs (g) (1) and (2) of this section, may obtain a personal or financial interest or benefit from an activity funded under this program, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure, or for one year thereafter:

(1) Who is an employee, agent, consultant, officer, or elected or appointed official of the grantee, that receives assistance under the program and who exercises or has exercised any functions or responsibilities with respect to assisted activities; or

(2) Who is in a position to participate in a decision making process or gain inside information with regard to such activities.

(h) *Drug Free Workplace Act of 1988.* The requirements of the Drug-Free Workplace Act of 1988 at 24 CFR part 24, subpart F apply to this program.

(i) *Anti-lobbying provisions under Section 319.* On February 26, 1990, the Department published an interim final rule at 55 FR 6736 advising recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans of a new prohibition recently mandated by Congress. Section 319 of the Department of the Interior Appropriations Act, Public Law 101–121, approved October 23, 1989, generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The interim final rule generally prohibits the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. In addition, the recipient must also file a disclosure if it has made or has agreed to make any payment with nonappropriated funds that would be prohibited, if paid with appropriated funds. The certification and disclosure requirements apply to all grants in excess of $100,000. However, since grantees sometimes may expect to receive additional grant funds through reallocations, all potential grantees are required to submit the certification, and to make the required disclosure if the grant amount exceeds $100,000. Potential grantees should refer to 55 FR 6737 (February 26, 1990) for the language for the certification and disclosure. The law provides substantial monetary penalties for failure to file the required certification or disclosure.

(j) *Intergovernmental review.* The requirements of Executive Order 12372 and the regulations issued under the order at 24 CFR part 52, to the extent provided by **Federal Register** notice in accordance with 24 CFR 52.3 apply to this program.

(k) *Indian preference.* The provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(e)), and the Indian preference rules in the IHA procurement regulations at 24 CFR part 905, subpart B, apply to IHAs. These provisions require, to the greatest extent feasible, that preference and opportunities for training and employment be given to Indians and that preference in the award of subcontracts and subgrants be given to Indian Organizations and Indian Owned Economic Enterprises.

(l) *Relocation and Acquistion.* The requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and implementing regulations at 49 CFR part 24 apply to this program.

Dated: September 10, 1991.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 91–24001 Filed 10–7–91; 8:45 am]

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federal register

Tuesday
October 8, 1991

Part IV

Department of Labor

Office of the Secretary

29 CFR Part 96

Audit Requirements for Grants, Contracts and Other Agreements; Final Rule

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 96

RIN 1291-AA

Audit Requirements for Grants, Contracts and Other Agreements

AGENCY: Office of the Secretary, Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor is amending the regulations governing audit requirements for institutions of higher learning and other non-profit organizations. The rule implements Office of Management and Budget (OMB) Circular No. A-133, "Audits of Institutions of Higher Learning and Other Non-Profit Institutions." OMB Circular No. A-133 requires non-profit institutions that receive $100,000 or more in Federal awards annually to have an audit made in accordance with the provisions of the Circular. Nonprofit institutions that receive more than $25,000 but less than $100,000 in Federal awards annually shall have an audit made in accordance with the Circular or have an audit made of each Federal award in accordance with Federal laws and regulations governing the programs in which they participate. OMB Circular No. A-133 also provides for oversight by Federal agencies.

EFFECTIVE DATE: November 7, 1991.

FOR FURTHER INFORMATION CONTACT: Melvin Goldberg. Telephone: 202-523-9174 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

On November 10, 1988, a notice was published by the Office of Management and Budget (OMB) in the **Federal Register**, requesting comments on a proposed OMB Circular No. A-133, "Audits of Institutions of Higher Educations and Other Non-Profit Organizations." 53 FR 45744.

Interested parties were invited to submit comments by January 9, 1989. Almost 100 comments were received from Federal agencies, State and local governments, universities, professional organizations, non-profit organizations and others. All comments were considered in developing the final OMB Circular No. A-133.

On March 16, 1990, final OMB Circular No. A-133 was published in the **Federal Register**. 55 FR 10019. This rule implements OMB Circular No. A-133 without change and adopts the circular as a new appendix C to 29 CFR part 96.

Publication in Final

The Department of Labor has determined, pursuant to 5 U.S.C. 553(b)(B), that good cause exists for waiving public comment on these amendments. Such comment is impracticable, unnecessary, and contrary to the public interest. The Office of Management and Budget invited public comments and considered the resulting comments in developing OMB Circular No. A-133, which this rule implements for the Department of Labor. If there are to be consistent Government-wide requirements for audits of institutions of higher learning and other non-profit institutions, any changes which might result from public comments on this rule should be adopted through a change to OMB Circular No. A-133 itself rather than in one department's implementing regulation. Similarly, to provide requirements as soon as possible to covered parties that are consistent with those being established by other agencies covered by OMB Circular No. A-133, the Department of Labor has determined that good cause exists under 5 U.S.C. 553(d)(3) to make the final rule effective on publication in the **Federal Register**.

Executive Order 11291

The Department of Labor has determined that this rule is not classified as a "major rule" under Executive Order 12291, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for the rule under 5 U.S.C. 533(b), the requirements of the Regulatory Flexibility Act, Public Law 96-354, Stat. 1165, 5 U.S.C. 601 et seq. pertaining to regulatory flexibility analysis, do not apply to this rule. See 5 U.S.C. 601(2).

Paperwork Reduction Act

The information collection requirements in OMB Circular No. A-133, which this rule implements for the Department of Labor, were approved by the Office of Management and Budget and assigned OMB control number 0991-0003.

List of Subjects in 29 CFR Part 96

Accounting, Grant programs, Reporting and recordkeeping requirements.

Final Rule

For reasons set out above, Part 96 of Subtitle A of Title 29, Code of Federal Regulations, is amended as set forth below.

Signed at Washington, DC, this 30th day of September, 1991.

Lynn Martin,

Secretary of Labor.

PART 96—AUDIT REQUIREMENTS FOR GRANTS, CONTRACTS AND OTHER AGREEMENTS

1. The authority for part 96 is revised to read as follows:

Authority: 31 U.S.C. 7500 *et seq.*; OMB Circular No. A-126; OMB Circular No. A-110; and OMB Circular No. A-133.

§ 96.202 [Amended]

2. Section 96.202 is amended by removing the first sentence and by adding in lieu thereof the following two sentences: "The audit requirements contained in OMB Circular No. A-133, attached as appendix C of this part, shall be followed for audits of all fiscal years beginning on or after January 1, 1990. The audit requirements contained in OMB Circular No. A-110, Attachment F, attached as appendix B of this part, shall be followed for audits of all fiscal years beginning on or after August 8, 1985, through December 31, 1989."

3. Part 96 is amended by adding a new appendix C, to read as follows:

Appendix C to Part 96—Office of Management and Budget Circular No. A-133—Audits of Institutions of Higher Learning and Other Non-profit Institutions

Executive Office of the President

Office of Management and Budget

OMB Circular No. A-133

March 8, 1990.

To the Heads of Executive Departments and Establishments

Subject: Audits of Institutions of Higher Education and Other Nonprofit Institutions

1. *Purpose.* Circular A-133 establishes audit requirements and defines Federal responsibilities for implementing and monitoring such requirements for institutions of higher education and other nonprofit institutions receiving Federal awards.

2. *Authority.* Circular A-133 is issued under the authority of the Budget and Accounting

Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended: Reorganization Plan No. 2 of 1970; and Executive Order No. 11541.

3. *Supersession.* Circular A–133 supersedes Attachment F, subparagraph 2h, of Circular A–110, "Uniform Administrative Requirements for Grants and Other Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations."

4. *Applicability.* The provisions of Circular A–133 apply to:

a. Federal departments and agencies responsible for administering programs that involve grants, cost-type contracts and other agreements with institutions of higher education and other nonprofit recipients.

b. Nonprofit institutions, whether they are recipients, receiving awards directly from Federal agencies, or are sub-recipients, receiving awards indirectly through other recipients.

These principles, to the extent permitted by law, constitute guidance to be applied by agencies consistent with and within the discretion, conferred by the statutes governing agency action.

5. *Requirements and Responsibilities.* The specific requirements and responsibilities of Federal departments and agencies and institutions of higher education and other nonprofit institutions are set forth in the attachment.

6. *Effective Date.* The provisions of Circular A–133 are effective upon publication and shall apply to audits of nonprofit institutions for fiscal years that begin on or after January 1, 1990. Earlier implementation is encouraged. However, until this Circular is implemented, the audit provisions of Attachment F to Circular A–110 shall continue to be observed.

7. *Policy Review (Sunset) Date.* Circular A–133 will have a policy review three years from the date of issuance.

8. *Inquiries.* Further information concerning Circular A–133 may be obtained by contacting the Financial Management Division, Office of Management and Budget, Washington, DC 20503, telephone (202) 395–3993.

Richard G. Darman,

Director.

Attachment—OMB Circular A–133

Audits of Institutions of Higher Education and Other Nonprofit Institutions

1. *Definitions.* For the purposes of this Circular, the following definitions apply:

a. *Award* means financial assistance, and Federal cost-type contracts used to buy services or goods for the use of the Federal Government. It includes awards received directly from the Federal agencies or indirectly through recipients. It does not include procurement contracts to vendors under grants or contracts, used to buy goods or services. Audits of such vendors shall be covered by the terms and conditions of the contract.

b. *Cognizant agency* means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 3 of this Attachment.

c. *Coordinated audit approach* means an audit wherein the independent auditor, and other Federal and non-federal auditors consider each other's work, in determining the nature, timing, and extent of his or her own auditing procedures. A coordinated audit must be conducted in accordance with *Government Auditing Standards* and meet the objectives and reporting requirements set forth in paragraph 12(b) and 15, respectively, of this Attachment. The objective of the coordinated audit approach is to minimize duplication of audit effort, but not to limit the scope of the audit work so as to preclude the independent auditor from meeting the objectives set forth in paragraph 12(b) or issuing the reports required in paragraph 15 in a timely manner.

d. *Federal agency* has the same meaning as the term agency in section 551(1) of Title 5, United States Code.

e. *Federal Financial Assistance.*

(1) "Federal financial assistance" means assistance provided by the Federal agency to a recipient or sub-recipient to carry out a program. Such assistance may be in the form of:

—grants;
—contracts;
—cooperative agreements;
—loans;
—loan guarantees;
—property;
—interest subsidies;
—insurance;
—direct appropriations;
—other non-cash assistance.

(2) Such assistance does not include direct Federal cash assistance to individuals.

(3) Such assistance includes awards received directly from Federal agencies, or indirectly when sub-recipients receive funds identified as Federal funds by recipients.

(4) The granting agency is responsible for identifying the source of funds awarded to recipients; the recipient is responsible for identifying the source of funds awarded to sub-recipients.

f. *Generally accepted accounting principles* has the meaning specified in the *Government Auditing Standards.*

g. *Independent auditor* means:

(1) A Federal, State, or local government auditor who meets the standards specified in the *Government Auditing Standards;* or

(2) A public accountant who meets such standards.

h. *Internal control structure* means the policies and procedures established to provide reasonable assurance that:

(1) Resource use is consistent with laws, regulations, and award terms;

(2) Resources are safeguarded against waste, loss, and misuse; and

(3) Reliable data are obtained, maintained, and fairly disclosed in reports.

i. *Major program* means an individual award or a number of awards in a category of Federal assistance or support for which total expenditures are the larger of three percent of total Federal funds expended or $100,000, on which the auditor will be required to express an opinion as to whether the major program is being administered in compliance with laws and regulations.

Each of the following categories of Federal awards shall constitute a major program where total expenditures are the larger of three percent of total Federal funds expended or $100,000:

—Research and Development.
—Student Financial Aid.
—Individual awards not in the student aid or research and development category.

j. *Management decision* means the evaluation by the management of an establishment of the findings and recommendations included in an audit report and the issuance of a final decision by management concerning its response to such findings and recommendations, including actions concluded to be necessary.

k. *Nonprofit institution* means any corporation, trust, association, cooperative or other organization which 1) is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; 2) is not organized primarily for profit; and 3) uses its net proceeds to maintain, improve, and/or expand its operations. The term "nonprofit institutions" includes institutions of higher education, except those institutions that are audited as part of single audits in accordance with Circular A–128 "Audits of State and Local Governments." The term does not include hospitals which are not affiliated with an institution of higher education, or State and local governments and Indian tribes covered by Circular A–128 "Audits of State and Local Governments."

l. *Oversight* agency means the Federal agency that provides the predominant amount of direct funding to a recipient not assigned a cognizant agency, unless no direct funding is received. Where there is no direct funding, the Federal agency with the predominant indirect funding will assume the general oversight responsibilities. The duties of the oversight agency are described in paragraph 4 of this Attachment.

m. *Recipient* means an organization receiving financial assistance to carry out a program directly from Federal agencies.

n. *Research and development* includes all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other nonprofit institutions. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

o. *Student Financial Aid* includes those programs of general student assistance in which institutions participate, such as those authorized by Title IV of the Higher Education Act of 1965 which is administered by the U.S. Department of Education and similar programs provided by other Federal agencies. It does not include programs which provide fellowships or similar awards to students on a competitive basis, or for specified studies or research.

p. *Sub-recipient* means any person or government department, agency, establishment, or nonprofit organization that receives financial assistance to carry out a program through a primary recipient or other sub–recipient, but does not include an individual that is a beneficiary of such a program. A sub-recipient may also be a direct recipient of Federal awards under other agreements.

q. *Vendor* means an organization providing a recipient or sub-recipient with generally required goods or services that are related to the administrative support of the Federal assistance program.

2. *Audit of Nonprofit Institutions*

a. Requirements Based on Award Received

(1) Nonprofit institutions that receive $100,000 or more a year in Federal awards shall have an audit made in accordance with the provisions of the Circular. However, nonprofit institutions receiving $100,000 or more but receiving awards under only one program have the option of having an audit of their institution prepared in accordance with the provisions of the Circular or having an audit made of the one program. For prior or subsequent years, when an institution has only loan guarantees or outstanding loans that were made previously, the institution may be required to conduct audits for those programs, in accordance with regulations of the Federal agencies providing those guarantees or loans.

(2) Nonprofit institutions that receive at least $25,000 but less than $100,000 a year in Federal awards shall have an audit made in accordance with this Circular or have an audit made of each Federal award, in accordance with Federal laws and regulations governing the programs in which they participate.

(3) Nonprofit institutions receiving less than $25,000 a year in Federal awards are exempt from Federal audit requirements, but records must be available for review by appropriate officials of the Federal grantor agency or subgranting entity.

b. Oversight by Federal Agencies

(1) To each of the larger nonprofit institutions the Office of Management and Budget (OMB) will assign a Federal agency as the cognizant agency for monitoring audits and ensuring the resolution of audit findings that affect the programs of more than one agency.

(2) Smaller institutions not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them with the most funds.

(3) Assignments to Federal cognizant agencies for carrying out responsibilities in this section are set forth in a separate supplement to this Circular.

(4) Federal Government-owned, contractor-operated facilities at institutions or laboratories operated primarily for the Government are not included in the cognizance assignments. These will remain the responsibility of the contracting agencies. The listed assignments cover all of the functions in this Circular unless otherwise indicated. The Office of Management and Budget will coordinate changes in agency assignments.

3. *Cognizant Agency Responsibilities.* A cognizant agency shall:

a. Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this Circular.

b. Provide technical advice and liaison to institutions and independent auditors.

c. Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

d. Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. A cognizant agency should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, of any violation of law within their jurisdiction.

e. Advise the recipient of audits that have been found not to have met the requirements set forth in this Circular. In such instances, the recipient will work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

f. Coordinate, to the extent practicable, audits or reviews made for Federal agencies that are in addition to the audits made pursuant to this Circular, so that the additional audits or reviews build upon audits performed in accordance with the Circular.

g. Ensure the resolution of audit findings that affect the programs of more than one agency.

h. Seek the views of other interested agencies before completing a coordinated program.

i. Help coordinate the audit work and reporting responsibilities among independent public accountants, State auditors, and both resident and non-resident Federal auditors to achieve the most cost-effective audit.

4. *Oversight Agency Responsibilities.* An oversight agency shall provide technical advice and counsel to institutions and independent auditors when requested by the recipient. The oversight agency may assume all or some of the responsibilities normally performed by a cognizant agency.

5. *Recipient Responsibilities.* A recipient that receives a Federal award and provides $25,000 or more of it during its fiscal year to a sub-recipient shall:

a. Ensure that the nonprofit institution sub-recipients that receive $25,000 or more have met the audit requirements of this Circular, and that sub-recipients subject to OMB Circular A–128 have met the audit requirements of that Circular;

b. Ensure that appropriate corrective action is taken within six months after receipt of the sub-recipient audit report in instances of noncompliance with Federal laws and regulations;

c. Consider whether sub-recipient audits necessitate adjustment of the recipient's own records; and

d. Require each sub-recipient to permit independent auditors to have access to the records and financial statements as necessary for the recipient to comply with this Circular.

6. *Relation to Other Audit Requirements*

a. An audit in accordance with this Circular shall be in lieu of any financial audit required under individual Federal awards. To the extent that an audit made in accordance with this Circular provides Federal agencies with the information and assurances they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits or reviews necessary to carry out responsibilities under Federal law and regulation. Any additional Federal audits or reviews shall be planned and carried out in such a way as to build upon work performed by the independent auditor.

b. Audit planning by Federal audit agencies should consider the extent to which reliance can be placed upon work performed by other auditors. Such auditors include State, local, Federal, and other independent auditors, and a recipient's internal auditors. Reliance placed upon the work of other auditors should be documented and in accordance with Government Auditing Standards.

c. The provisions of this Circular do not limit the authority of Federal agencies to make or contract for audits and evaluations of Federal awards, nor do they limit the authority of any Federal agency Inspector General or other Federal official.

d. The provisions of this Circular do not authorize any institution or sub-recipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits, evaluations or reviews.

e. A Federal agency that makes or contracts for audits, in addition to the audits made by recipients pursuant to this Circular, shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits or reviews include financial, performance audits and program evaluations.

7. *Frequency of Audit.* Audits shall usually be performed annually but not less frequently than every two years.

8. *Sanctions.* No audit costs may be charged to Federal awards when audits required by this Circular have not been made or have been made but not in accordance with this Circular. In cases of continued inability or unwillingness to have a proper audit in accordance with the Circular, Federal agencies must consider appropriate sanctions including:

—withholding a percentage of awards until the audit is completed satisfactorily;
—withholding or disallowing overhead costs; or
—suspending Federal awards until the audit is made.

9. *Audit Costs.* The cost of audits made in accordance with the provisions of this Circular are allowable charges to Federal awards. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provisions of Circular A–21, "Cost Principles for Universities" or Circular A–122, "Cost Principles for Nonprofit Organizations," FAR

subpart 31, or other applicable cost principles or regulations.

10. *Auditor Selection.* In arranging for audit services institutions shall follow the procurement standards prescribed by Circular A–110, "Uniform Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Nonprofit Organizations."

11. *Small and Minority Audit Firms*

a. Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this circular.

b. Recipients of Federal awards shall take the following steps to further this goal:

(1) Ensure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable;

(2) Make information on forthcoming opportunities available and arrange timeframes for the audit to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals;

(3) Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals;

(4) Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs, and in cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities;

(5) Encourage contracting with consortiums of small audit firms as described in section (1), above, when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals; and

(6) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

12. *Scope of Audit and Audit Objectives*

a. The audit shall be made by an independent auditor in accordance with Government Auditing Standards developed by the Comptroller General of the United States covering financial audits. An audit under this circular should be an organization-wide audit of the institution. However, there may be instances where Federal auditors are performing audits or are planning to perform audits at nonprofit institutions. In these cases, to minimize duplication of audit work, a coordinated audit approach may be agreed upon between the independent auditor, the recipient and the cognizant agency or the oversight agency. Those auditors who assume responsibility for any or all of the reports called for by paragraph 15 should follow guidance set forth in Government Auditing Standards in using work performed by others.

b. The auditor shall determine whether:

(1) The financial statements of the institution present fairly its financial position and the results of its operations in accordance with generally accepted accounting principles;

(2) The institution has an internal control structure to provide reasonable assurance that the institution is managing Federal awards in compliance with the laws and regulations that could have a material impact on the financial statements; and

(3) The institution has complied with laws and regulations that may have a direct and material effect on its financial statement amounts and on each major Federal program.

13. *Internal Controls Over Federal Awards; Compliance Reviews*

a. *General.* The independent auditor shall determine and report on whether the recipient has an internal control structure to provide reasonable assurance that it is managing Federal awards in compliance with applicable laws and regulations, and controls that ensure compliance with the laws, regulations, and contract terms, and that it safeguards Federal funds. In performing these reviews, independent auditors should relay upon work performed by a recipient's internal auditors to the maximum extent possible. The extent of such reliance should be based upon the Government Auditing Standards.

b. *Internal Control Review.* (1) In order to provide this assurance on internal controls, the auditor must obtain an understanding of the internal control structure and assess levels of internal control risk. After obtaining an understanding of the controls, the assessment must be made whether or not the auditor intends to place reliance on the internal control structure.

(2) As a part of this review, the auditor shall:

(a) Perform tests of controls to evaluate the effectiveness of the design and operation of the policies and procedures in preventing or detecting material noncompliance. Tests of controls will not be required for those areas where the internal control structure policies and procedures are likely to be ineffective in preventing or detecting noncompliance, in which case a reportable condition or a material weakness should be reported in accordance with paragraph 15 c(2) of this Circular.

(b) Review the recipient's system for monitoring sub-recipients and obtaining and acting on sub-recipient audit reports.

(c) Determine whether controls are in effect to ensure direct and indirect costs were computed and billed in accordance with the guidance provided in the general requirements section of the compliance supplement to this Circular.

c. *Compliance Review.* (1) The auditor shall determine whether the recipient has complied with laws and regulations that may have a direct and material effect on any of its major Federal programs. In addition, transactions selected for non-major programs shall be tested for compliance with Federal laws and regulations that apply to such transactions.

(2) In order to determine which major programs are to be tested for compliance, recipients shall identify, in their accounts, all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies, through other State and local governments or other recipients. To assist recipients in identifying Federal awards, Federal agencies and primary recipients shall provide the Catalog of Federal Domestic Assistance (CFDA) numbers to the recipients when making the awards.

(3) The review must include the selection of an adequate number of transactions from each major Federal financial assistance program so that the auditor obtains sufficient evidence to support the opinion on compliance required by paragraph 15c(3) of this Attachment. The selection and testing of transactions shall be based on the auditors' professional judgment considering such factors as the amount of expenditures for the program; the newness of the program or changes in its conditions; prior experience with the program particularly as revealed in audits and other evaluations (*e.g.*, inspections, program reviews, or system reviews required by Federal Acquisition Regulations); the extent to which the program is carried out through sub-recipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(4) In making the test of transactions, the auditor shall determine whether:

—the amounts reported as expenditures were for allowable services, and
—the records show that those who received services or benefits were eligible to receive them.

(5) In addition to transaction testing, the auditor shall determine whether:

—matching requirements, levels of effort and earmarking limitations were met,
—Federal financial reports and claims for advances and reimbursement contain information that is supported by books and records from which the basic financial statements have been prepared, and
—amounts claimed or used for matching were determined in accordance with (1) OMB Circular A–21, "Cost Principles for Educational Institutions"; (2) matching or cost sharing requirements in Circular A–110, "Uniform Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations"; (3) Circular A–122, "Cost Principles for Nonprofit Organizations"; (4) FAR subpart 31 cost principles; and (5) other applicable cost principles or regulations.

(6) The principal compliance requirements of the largest Federal programs may be ascertained by referring to the "Compliance Supplement for Single Audits of Educational Institutions and Other Nonprofit Organizations," and the "Compliance

Supplement for Single Audits of State and Local Governments," issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplements, the auditor should ascertain compliance requirements by reviewing the statutes, regulations, and agreements governing individual programs.

(7) Transactions related to other awards that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

14. *Illegal Acts.* If, during or in connection with the audit of a nonprofit institution, the auditor becomes aware of illegal acts, such acts shall be reported in accordance with the provisions of the Government Auditing Standards.

15. *Audit Reports.*

a. Audit reports must be prepared at the completion of the audit.

b. The audit report shall state that the audit was made in accordance with the provisions of this Circular.

c. The report shall be made up of at least the following three parts:

(1) The financial statements and a schedule of Federal awards and the auditor's report on the statements and the schedule. The schedule of Federal awards should identify major programs and show the total expenditures for each program. Individual major programs other than Research and Development and Student Aid should be listed by catalog number as identified in the Catalog of Federal Domestic Assistance. Expenditures for Federal programs other than major programs shall be shown under the caption "other Federal assistance." Also, the value of non-cash assistance such as loan guarantees, food commodities or donated surplus properties or the outstanding balance of loans should be disclosed in the schedule.

(2) A written report of the independent auditor's understanding of the internal control structure and the assessment of control risk. The auditor's report should include as a minimum: (1) the scope of the work in obtaining understanding of the internal control structure and in assessing the control risk, (2) the nonprofit institution's significant internal controls or control structure including the controls established to ensure compliance with laws and regulations that have a material impact on the financial statements and those that provide reasonable assurance that Federal awards are being managed in compliance with applicable laws and regulations, and (3) the reportable conditions, including the identification of material weaknesses, identified as a result of the auditor's work in understanding and assessing the control risk. If the auditor limits his/her consideration of the internal control structure for any reason, the circumstances should be disclosed in the report.

(3) The auditor's report on compliance containing:

—An opinion as to whether each major Federal program was being administered in compliance with laws and regulations applicable to the matters described in paragraph 13(c)(3) of this Attachment, including compliance with laws and regulations pertaining to financial reports and claims for advances and reimbursements;

—A statement of positive assurance on those items that were tested for compliance and negative assurance on those items not tested;

—Material findings of noncompliance presented in their proper perspective:

• The size of the universe in number of items and dollars,

• The number and dollar amount of transactions tested by the auditors,

• The number and corresponding dollar amount of instances of noncompliance;

—Where findings are specific to a particular Federal award, an identification of total amounts questioned, if any, for each Federal award, as a result of noncompliance and the auditor's recommendations for necessary corrective action.

d. The three parts of the audit report may be bound into a single document, or presented at the same time as separate documents.

e. Nonmaterial findings need not be disclosed with the compliance report but should be reported in writing to the recipient in a separate communication. The recipient, in turn, should forward the findings to the Federal grantor agencies or subgrantor sources.

f. All fraud or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, may be covered in a separate written report submitted in accordance with the Government Auditing Standards.

g. The auditor's report should disclose the status of known but uncorrected significant material findings and recommendations from prior audits that affect the current audit objective as specified in the Government Auditing Standards.

h. In addition to the audit report, the recipient shall provide a report of its comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

i. Copies of the audit report shall be submitted in accordance with the reporting standards for financial audits contained in the Government Auditing Standards. Sub-recipient auditors shall submit copies to recipients that provided Federal awards. The report shall be due within 30 days after the completion of the audit, but the audit should be completed and the report submitted not later than 13 months after the end of the recipient's fiscal year unless a longer period is agreed to with the cognizant or oversight agency.

j. Recipients of more than $100,000 in Federal awards shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audit reports on file.

k. Recipients shall keep audit reports, including sub-recipient reports, on file for three years from their issuance.

16. Audit Resolution

a. As provided in paragraph 3, the cognizant agency shall be responsible for ensuring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and the agency. Alternate arrangements may be made on case-by-case basis by agreement among the agencies concerned.

b. A management decision shall be made within six months after receipt of the report by the Federal agencies responsible for audit resolution. Corrective action should proceed as rapidly as possible.

17. Audit Workpapers and Reports. Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

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Part V

Department of Commerce

Foreign-Trade Zones Board

15 CFR Part 400

Foreign Trade Zones in the United States; Final Rule

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

15 CFR Part 400

[Order No. 530; Docket No. 21222-1208]

RIN 0625-AA04

Foreign-Trade Zones in the United States

AGENCY: Foreign-Trade Zones Board, International Trade Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Foreign-Trade Zones Board (the Board) hereby revises its regulations issued pursuant to the Foreign-Trade Zones (FTZ) Act of 1934, as amended (the Act), concerning the authorization and regulation of foreign-trade zones and zone activity in the United States. The rule is comprehensive and constitutes a complete revision, replacing the present version of 15 CFR part 400. The major changes involve the adoption of definitive criteria and procedures for reviewing activity that results in changes in Customs tariff classifications. Many of the changes amount to a codification of practices which have evolved through interpretations and decisions of the Board and the Customs Service under the Act and the existing regulations.

The new regulations are designed for efficient administration of the zone program in the dynamic trade environment that has evolved since enactment of the Act. They acknowledge the role zones have come to play in helping public agencies and communities improve their local services for international trade-related activity and, at the same time, they recognize the need for effective reviews and monitoring because of the increased use of zones for manufacturing and processing operations. Zone activity is addressed both from the standpoint of firms that use zones to help improve their international competitiveness and those that are concerned about the effects of certain types of imports on domestic industry. The regulations are designed to make zone procedures reasonably accessible to qualified zone users without resulting in harmful consequences that are detrimental to the public interest.

EFFECTIVE DATE: The effective date of this part 400 is November 7, 1991, except that in regard to shipments of merchandise admitted to zones approved and activated prior to the foregoing effective date, the effective date for §§ 400.28(a)(2), 400.28(a)(3), and 400.33(b)(2) is March 9, 1992.

FOR FURTHER INFORMATION CONTACT: John J. Da Ponte, Jr., Executive Secretary, Foreign-Trade Zones Board, room 3716, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230 (202/377-2862).

SUPPLEMENTARY INFORMATION:

Regulatory Flexility Act

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that these regulations will not have a significant economic impact on a substantial number of small entities pursuant to sections 603 and 604 of title 5, United States Code, added by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). There are some 170 zone grantees and less than 100 firms operating all or parts of zone facilities for grantees. Of some 2,200 firms using zones, about 600 use them on a full time basis. It is estimated that fewer than 100 small entities are included among the total number of firms using zones for manufacturing and processing activity. The revised regulations to a great extent codify existing practices and interpretations. Their overall impact should, in any case, be favorable because they clarify the process for reviewing zone activity by providing more details on criteria and procedures.

Executive Order 12291

This is not a major rule as defined in section 1(b) of E.O. 12291, because it involves changes to existing regulations that are not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or, (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12612.

The revised regulations do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Paperwork Reduction Act

This rule contains information collection activities subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). It imposes no additional reporting or record keeping burden on the public. Existing requirements for zone applicants, grantees, operators, and users (the main parties affected by the rule) are simplified through the codification of and clarification of practice and procedure (OMB Control Nos. 0625-0139 and 0625-0109).

Explanation for Separate Effective Date for Certain Sections

The reason for the separate effective date for §§ 400.28(a)(2), 400.28(a)(3), and 400.33(b)(2) is to provide a reasonable transition period during which firms presently using zones in conformance with the Act and existing regulations may, if necessary, adapt their practices without disrupting their manufacturing and processing activity.

Background

Foreign-trade zones (zones) are restricted-access sites in or near ports of entry, which are licensed by the Board and operated under the supervision of the Customs Service (see, 19 CFR part 146). Authority for establishing these facilities is granted to qualified corporations. Applications submitted to the Board for grants of authority must show the need for zone services and a workable plan that includes suitable facilities and financing.

Zones are operated under public utility principles. Grantees usually contract with private firms to operate facilities and provide services to zone users. Zones have as their public policy objective the creation and maintenance of employment through the encouragement of operations in the United States which, for Customs reasons, might otherwise have been carried on abroad. The objective is furthered particularly when zones assist exporters and reexporters, and usually when goods arrive from abroad in an unfinished condition for processing here rather than overseas.

Foreign and domestic merchandise may be moved into zones for operations not otherwise prohibited by law involving storage, exhibition, assembly, manufacture or other processing. The usual formal Customs entry procedure and payment of duties is not required on the foreign merchandise unless and until it enters Customs territory for domestic consumption, in which case the importer ordinarily has a choice of paying duties either on the original foreign material or the finished product. Quota restrictions do not normally apply to foreign goods stored in zones, but the Board can limit or deny zone use in specific cases on

public interest grounds. Domestic goods moved into a zone for export may be considered exported upon entering the zone for purposes of excise tax rebates and drawback. "Subzones" are a special-purpose type of ancillary zone authorized by the Board, through grantees of public zones, for operations by individual firms that cannot be accommodated within an existing zone when it can be demonstrated that the activity will result in a significant public benefit and is in the public interest. Goods in a zone for a *bona fide* Customs reason are exempt from state and local *ad valorem* taxes.

Since 1970, the number of ports of entry with zone projects has increased from 10 to 170, and the value of goods entering zones and subzones has increased from just over $100 million to over $75 billion. The use of zones for manufacturing activity has increased dramatically during the past decade. It now represents about 85 percent of zone activity. About 75 percent of goods currently entering zones is of domestic origin and some $11 billion of the goods shipped from zones is exported.

The heightened interest in zones, both on the part of communities providing zone services as part of their economic development efforts and firms using zone procedures to help improve their international competitiveness, is related to the increasing importance of international trade and investment to the domestic economy. While there has been little public controversy concerning the establishment of general-purpose zones, there is growing concern about manufacturing activity in zones and subzones.

Firms interested in using zones for manufacturing seek greater access and flexibility in zone procedures to help them compete against imports of finished goods and increase their exports. Those opposing zone manufacturing operations contend that zone procedures should be more restrictive for non-export operations, especially when inverted tariffs (actual or effective lower duty rate on finished product) are involved.

In developing the revised regulations, the Board took into account the testimony and reports from the 1989 Congressional hearings on the zone program (House Subcommittee on Trade of the Committee on Ways and Means, October 24, 1989; Subcommittee on Commerce, Consumer, and Monetary Affairs of House Government Operations Committee, March 7, 1989). It also considered the reports prepared on the zone program in recent years for the House Committee on Ways and Means by the General Accounting Office and the International Trade Commission (GAO/GGD–84–52, March 2, 1984; GAO/NSIAD–89–85, February 7, 1989; USITC Publication 1496, February 1984; USITC Publication 2059, February 1988).

Comments. The Board, in developing the final rule, has considered all of the comments received in response to its two **Federal Register** notices which were published on January 26, 1990 (55 FR 2760) and November 20, 1990 (55 FR 48446) regarding proposed revisions to 15 CFR part 400. The first of these notices contained the proposed revisions in full, the second contained further revisions to seven sections based on the first round of comments, as well as a new section on application fees. The comments received in response to both notices and the Board's position on the points raised in the comments are summarized below. The sections listed in the headings are those of the final rule, and references are made to the previous **Federal Register** notices when appropriate.

Section 400.1

Comment: A few commenters noted the absence of a statement which sets forth the purposes of the zone program, and others noted the absence of provisions to engage the Board in decisions regarding the Customs aspects of zone activity.

Board Position: Paragraph (a) has been expanded to include a general statement on the purpose of the program under the Act. Paragraph (b) cites the Customs regulations applicable to that agency's role in supervising zones. The Board's regulations cover the areas within its jurisdiction, and they have been written in conformance with section 8 of the Act (19 U.S.C. 81h), which provides that the Board's regulations must be consistent with the regulations issued by the Secretary of the Treasury.

Section 400.1(c)

Comment: A number of parties opposed the provision as written in the January 1990 notice because it included language that would have required that "zone restricted" status be elected for domestic merchandise seeking state/local *ad valorem* tax exemptions. Also, objection was made to the provision in the November 1990 notice requiring that normal entries be made on articles consumed in zones.

Board Position: Section 400.1(c) contains a general statement as to the scope of special procedures applicable in zones. The proposed requirement that "zone restricted" status be elected on domestic goods exempt from state/local *ad valorem* taxes was intended to assist the Board in enforcing the statement in the House report accompanying Public Law 98–873, 10/30/84, indicating that this exemption should apply only to goods in zones for *bona fide* Customs reasons. Commenters noted that the election of "zone restricted" status is not mandated by statute and that requiring the election of such status is, therefore, beyond the Board's authority. While there is no clear answer to this question in light of the Board's broad discretionary authority, it has been decided to delete the proposed requirement. This means that more vigilance will be required from State/local tax officials with regard to items seeking the exemption based on their being in zones for eventual exportation.

The statement that normal entries must be made on articles consumed in zones is based upon a long-standing interpretation of the statute and its legislative history by Treasury and the Board. Thus, such reference is considered a restatement of what the Board considers to be the law. Because it is not necessary, however, the statement has been deleted.

Section 400.2(i)

Comment: Numerous parties objected to the definition of manufacturing proposed in the January 1990 notice, contending that it is broader than any generally accepted definition of the term. Most argued that the definition should cover only situations where there is substantial transformation of merchandise, and one party noted that the definition would complicate changes due to the new Harmonized Tariff Schedule. A number of parties recommended that the scope of the definition include even that type of manufacturing which does not involve a change in tariff classification.

Board Position: There is no definition for the term "manufacturing" in the existing regulations. In recent years, it has been the practice to consider all activity reviewable that entails changes in tariff classification to incoming articles. The reason the Board proposed a broad definition of the term in the January 1990 notice was to codify this practice and encompass all activity that should be subject to the review process called for in § 400.31.

After consideration of the many comments objecting to the definition as originally proposed, the Board has adopted a revised definition for manufacturing, based on the definition used by the Customs Service. It views substantial transformation as the fundamental characteristic of the term. However, because public interest issues

can arise in regard to activity involving changes in classification that would not be considered manufacturing under this definition, the Board has included the term "processing" in § 400.2, to cover other types of activity that would remain subject to review (§ 400.2(1)). Various sections of the regulations dealing with manufacturing and processing provide procedures that differ slightly depending upon which of these two types of activity is involved, but the substantive factors considered in reviews of manufacturing are essentially the same as for processing when the latter activity involves items subject to quotas or inverted tariffs.

Section 400.2(p)

Comment: Several parties contended that in the definition of "subzone" (§ 400.2(o), Jan. 1990 notice) a distinction should be made for distribution facilities, so that parties seeking authority for such activity should not have to go through application procedures required of a manufacturing subzone applicant.

Board Position: The definition as written incorporates the main characteristic of subzones, i.e, they are single-user adjuncts to general-purpose zones, the latter being multi-user sites. The definition does not itself determine application requirements. Applications for non-manufacturing sites usually involve less complex issues, and therefore the application process for these cases could be simpler. Whatever the type of subzone, however, applicants have the burden of demonstrating a significant public benefit (§ 400.31(c)(3)).

Sections 400.11(a)(6) and 400.11(a)(7)

Comment: A few parties suggested that these provisions should be clarified to state that the Board's authority to inspect zone operations and accounts, and to require reports, should be limited to activated zone facilities.

Board Position: The provisions are essentially a restatement of the Board's existing regulations (§ 400.200(g)). They apply to activated zone areas. Thus, they are limited to the supervision of activity, records, and accounts to the extent necessary to carry out Board responsibilities. The supervision is normally conducted by Customs officials.

Section 400.12(v)

Comment: A few parties suggested that the Executive Secretary's authority to permit the return of zone-restricted merchandise for entry into U.S. Customs territory should be extended to cover goods valued up to 1,000,000 dollars, instead of the 100,000 dollars initially proposed (§§ 400.12(f) and 400.44(c)(3), Jan. 1990 notice).

Board Position: The responsibilities of the Board's Executive Secretary are summarized in § 400.12 of the revised regulations (§ 400.1301 of the existing regulations). The authority to permit the return of zone-restricted merchandise is a new delegation of authority intended to simplify the decision process in these cases, which involve a determination whether the return to Customs territory of goods originally destined for export is in the public interest. The local District Director of Customs' recommendation is a key factor in the determination, and full duties are due when such action is authorized. The Board agrees that, in the interest of improved efficiency in program administration, a higher figure than the one originally proposed would be a more realistic figure for this delegation of authority. Thus, it has increased the amount applicable to 500,000 dollars.

Section 400.21

Comment: Many commenters contested the 35-mile restriction (in relation to Customs ports of entry) proposed for subzones in the January 1990 notice. When the section was revised in the November 1990 notice to retract the proposed subzone limit, attention turned to the general-purpose zone restriction, and a number of commenters requested that the 35-mile limit for this type of zone be extended to over 60 miles. The commenters in both instances argued that locational restrictions unduly deny access to zone procedures to communities and firms that could benefit from zones. Also, certain parties contended that the limits discriminate against rural communities and small businesses.

On the other hand, numerous parties supported the proposed adjacency requirements. They suggested that, if the Board decides to revise the proposal as published, Customs should be required to conduct annual on-site inspections and audits.

Board Position: The existing regulations do not contain specific geographic limits for either zones or subzones. They simply note the statutory requirement that zones must be in or adjacent to Customs ports of entry (§ 400.200(a) of the existing regulations). Under current practice in interpreting "adjacency", general-purpose zones may be authorized for sites within 35 miles of the outer limits of a Customs port of entry. There is no geographic limit for subzones, given their single occupancy and defined activity. In January 1990 the Board proposed that subzones be restricted to a 35-mile radius or one hour's driving time from the nearest Customs office (§ 400.21(b)(2), Jan. 1990 notice). The strong opposition expressed in response to the notice was reviewed, and after discussions with the Customs Service the proposed limit was deleted in the November 1990 notice (§ 400.21(b)(2)(ii)). It was recognized that, because subzone operators enter into agreements with Customs prescribing procedures for examination of shipments upon arrival from abroad and for an audit system, the locational relationship of the subzone to the port of entry is not an important factor.

The November 1990 notice adopted current practice in regard to subzones. Accepting this change, commenters directed their opposition to the existing 35-mile limit for general-purpose zones. Upon consideration and discussions with Customs with regard to current audit methods used by Customs in its supervision of zones and, taking into account the greater significance of international trade and investment to our national economy, the Board has concluded that there is now a basis for extending the limits for general-purpose zones to 60 miles or 90 minute's driving time from the outer limits of port of entry boundaries. This will make more communities eligible to apply for authority to establish general-purpose zone programs as part of their development efforts. The new limit, however, does not exempt applicants from the requirement that applicants seeking additional zone projects in port of entry areas must demonstrate that the existing zone(s) will not adequately serve the convenience of commerce (see, § 400.21(a)(2)).

Section 400.22(d)

Comment: A few commenters objected to the provisions of this section which allow the grantee of other than the closest general-purpose zone to sponsor a proposed subzone.

Board Position: The provision essentially reflects current practice. It takes into account the interests of existing zone grantees, as well as subzone prospects and the public interest. While it provides options for subzone sponsorship, the provision requires that the sponsoring zone be in the same state as the subzone, thus protecting the role of state legislatures in determining the eligibility of applicants. It retains the practice of giving preference to the closest zone, but recognizes that proximity in location might not be the most significant relationship in certain situations. Under the new rule, current practice would be

extended to permit state agencies to become subzone sponsors under certain circumstances, if so authorized by state legislatures. The complaint provision in § 400.22(d)(2) provides a procedure for reviews when sponsorship is contested.

Section 400.23(b)

Comment: A number of parties argued that the process for subzones should involve criteria that require approval unless the proposed activity is "detrimental to the public interest, health, or safety," as provided for in the FTZ Act (19 U.S.C. 81o(c)), instead of applying a test calling for a positive finding that the activity is in the public interest.

Board Position: The factors enumerated in § 400.23(b) with regard to subzones are essentially a codification of current practice. This section must be read in conjunction with § 400.31, which delineates the criteria considered in reviewing manufacturing and processing activity, and notes that applicants for subzones must also demonstrate that their proposals involve a significant public benefit. The section of the Act cited by the commenters has always been considered the underlying basis for the Board's authority, along with sections 3 and 7 of the Act (19 U.S.C. 81(c) and 81(g)), to restrict or prohibit zone activity it does not find to be in the public interest. (See, *Armco Steel Corporation* v. *Stans*, 431 F. 2d 779 (2nd Cir. 1970); *Hawaiian Independent Refinery (HIRI)* v. *United States*, 460 F. Supp. 1249 (Cust. Ct. 1978)).

Authorization to conduct manufacturing activity in zones is a privilege, not a right, and in addition to viewing technical requirements, the Board must determine that zone activity is consistent with the public interest. Under Board practice, a review conducted from the perspective of determining whether activity is "in the public interest" does not differ substantively from one that determines whether activity is "detrimental to the public interest". The difference is procedural. An inquiry as to whether activity is in the public interest is generally considered appropriate when an application is involved and the question is whether proposed activity should be authorized, whereas the latter form of inquiry would be more appropriate when ongoing authorized activity is being reviewed in terms of changes either in external or internal circumstances.

In the case of subzones, the application burden is greater. Subzones are single-user facilities, which are not structured to serve the public. It is their activity that has a public effect, and case law has recognized that the Board has broad discretionary authority to evaluate that effect in terms of the public interest (see, *Armco* and *HIRI, supra*).

Section 400.25(a)

Comment: Two comments were received that recommended requiring more information in subzone applications, one seeking a complete showing of the existing and potential impact on domestic industry competitors and their suppliers, the other calling for a complete statement of near and long-term sourcing plans.

Board Position: The general requirements, as proposed and adopted, call for information on both these subjects. It provides interested parties with enough application information on which to form an opinion and present comments and evidence. There is also an opportunity to review comments and evidence submitted for the record in a case. The procedure for inviting public comment provides a 15-day period for rebuttal comments. This allows interested parties to review the comments submitted during the first phase of the comment period and to submit further material in response (§ 400.27(c)(2)). Also, § 400.25(a)(6) authorizes the Executive Secretary to require additional information needed to permit a full review of issues presented by the proposal in question. The latter section also provides for the issuance of guidelines outlining the kind of detailed information needed in specific situations.

Section 400.25(a)(viii)

Comment: A number of parties requested deletion of the requirement calling for information as to whether alternative procedures have been considered as a means of obtaining the benefits sought under zone procedures.

Board Position: A decision to use zone procedures should generally be made after consideration of other special procedures available under U.S. Customs law. This provision is included in the regulations to encourage zone managers and prospective users to select the most efficient procedural means available both from their standpoint and that of the Customs Service. The provision is hortatory, however, and is not intended to deny access to zone procedures merely because other procedures are available.

Section 400.27

Comments: Many parties wrote in support of this section as it was revised in the November 1990 notice, with some suggesting further reduction in the time frames for Board decisions of ten months and one year. However, a number of parties objected to the provision in § 400.27(d)(3)(vi), which makes specific reference to industry surveys by examiners in reviewing proposals involving manufacturing, and calls for the use of questionnaires when necessary.

Board Position: This section on procedures for reviewing and processing applications was first drafted in outline form in the January 1990 version of the proposed regulations, which contained no deadlines. The provision, as adopted, is essentially the version published in November 1990, which describes procedures in more detail and includes a time frame calling for the completion of cases involving manufacturing within one year, and others within ten months. It serves as a guide for applicants as to the lead-time for submitting applications, but does not preclude consideration of requests for more expeditious decisions when urgency is involved.

Section 400.27(d)(3) lists the steps taken by examiners in reviews of cases involving manufacturing and processing. The survey phase (§ 400.27(d)(3)(vi)) is usually an essential step in evaluating cases in which there is a question of industry impact, especially when opposition has been expressed by domestic industry. The survey can be based on existing data, and might involve phone contacts or site visits. It is a means of assessing and ascertaining information on record and in developing new information essential for a thorough review, including material on import competition and price sensitivity. The surveys envisioned in this section do not entail polling parties as to their views on the case under study. Their format is not predetermined and depends on the type of case and situation involved.

The provision, as proposed in the November 1990 notice, contained reference to the use of questionnaires when necessary. This reference has been deleted in the final provision. How questions are communicated will be left up to the examiner or reviewer in a case and will depend on the nature of the case. Should a need arise for the use of form questionnaires, appropriate procedures will be followed by the Board, which would include obtaining OMB clearance when necessary.

Sections 400.28(a)(2) and 400.28(a)(3)

Comment: Numerous parties objected to these provisions as they were covered in paragraph (a)(2) of the January 1990 version of § 400.28. The provision in question required approval of the Board

or the Commerce Department's Assistant Secretary for Import Administration prior to the commencement of new manufacturing activity and for sourcing changes involving the use of new foreign articles subject to higher tariffs than the finished products in which they are included (§ 400.28(a)(2)(2), Jan. 1990 notice). Many critics contended that these requirements would seriously disrupt manufacturing activity without justification, since changes in a production process must often be made on short notice, and activity would have to be halted or curtailed while awaiting approval. They consider the provision unduly burdensome especially in regard to changes that occur in sourcing components, noting that it would have the effect of suspending or denying access to zone procedures even when there is no evidence of negative effects. The greatest impact would be on existing operations that are in full compliance with the law.

On the other hand, many parties expressed support for this provision to ensure that there is evaluation and comment on changes in zone activity that might have an adverse effect on domestic industry.

Board Position: The Board has a responsibility to evaluate zone activity in terms of the public interest, not only at the time applications are reviewed, but also on a continuing basis as circumstances change. The requirement that changes in the scope of manufacturing activity are subject to further approval has been a long-standing practice. It has been included as a proviso in zone grants issued since the early 1970's requiring notification for approval prior to the commencement of new manufacturing activity. The practice has involved notification to the Executive Secretary and either the approval of that official or the Board, depending upon the circumstances.

After considering the comments on § 400.28(a)(2) as it appeared in the January 1990 notice (no further change was proposed in the November 1990 notice), the section was revised by the Board. While an advance approval requirement was retained for changes in the scope of manufacturing (e.g., new end products, significant expansion of plant production capacity), such pre-clearance is required for new processing activity only when it involves products subject to quotas or inverted tariffs (§ 400.28(a)(2)).

The procedure for these situations (§ 400.32) includes a delegation of fast-track decision authority to the Commerce Department's Assistant Secretary for Import Administration in the following situations: When there is a precedent for the new activity, when it is for export only, when no lower tariff rate is sought, or when the activity could be conducted under bonded warehouse procedures. The last of these circumstances was added in consideration of the comments. This delegation of authority from the Board is an extension of the practice mentioned above based on a proviso in zone grants. It designates the Commerce Assistant Secretary for Import Administration as the official for decisions in all fast-track cases, based on this official's role as the Board alternate for the Secretary of Commerce.

As has been noted, the condition relating to changes in manufacturing and processing remains covered in § 400.28(a)(2). However, the originally proposed requirement on sourcing changes has been revised and moved to paragraph (a)(3). The revision involves adoption of a notification procedure for changes in sourcing instead of a pre-clearance requirement. It recognizes that sourcing changes must often be implemented on short notice, and that it would be unduly disruptive to require advance approval of such changes when the end products remain those for which authority has been granted. Thus, when a change is limited to materials and components and does not involve new finished products, the requirement is limited to notification of the Executive Secretary (§ 400.28(a)(3)), who would conduct a preliminary review to determine whether the change could result in significant adverse effects. The Commerce Department's Assistant Secretary for Import Administration would then determine whether further review is necessary, taking into account the factors in § 400.31.

Restrictive action would be taken by the Board or the Commerce Department's Assistant Secretary for Import Administration (under § 400.32) when appropriate. When restrictions are warranted, they frequently involve a requirement that foreign-privileged status (duty rate locked on incoming article—19 CFR 146.41) be elected on the items in question.

Applicants can minimize the need for approvals and notifications under §§ 400.28(a)(2) and 400.28(a)(3) by including information in their applications to cover proposed activity in a broader scope that includes near and mid-term projections. While provisions of § 400.28 apply to both past and future grants of authority, the foregoing sections apply only to new changes to ongoing activity.

Section 400.28(a)(5)

Comment: There was some opposition to a provision that appeared in the January 1990 notice (§ 400.28(a)(4)) which would invalidate outstanding grants of authority not activated within five years of adoption of the revised regulations or, in regard to new zones, five years after approval.

Board Position: The Board has adopted the provision (redesignated as § 400.28(a)(5)). There is presently no sunset provision in the Act or regulations. The Board's current practice is to retire inactive zone grants on request. Since zone grants have always been issued subject to the condition that activation must occur within a reasonable time, current practice leaves open the question of the status of non-activated grants. The Board has been liberal in accepting explanations for delays, but an automatic suspension provision is needed for long-term delays in the interest of efficient program administration. The provision gives grantees ample time within which to activate projects. It applies both to grants for zones and subzones, and the language in the final rule has been revised to clarify this fact. The provision does not preclude consideration of requests for reinstatement.

Section 400.28(a)(8)

Comment: Several parties objected to this provision as written in the 1990 notice (§ 400.28(a)(7)), which they interpreted as prohibiting all sales of zone sites or facilities under terms which included consideration of zone status.

Board Position: Section 17 of the FTZ Act (19 U.S.C. 81q) prohibits the sale or assignment of zone grants. Zone projects have become more complex and now include industrial parks with private owners. The provision has been clarified to reflect the position that when property with zone status is sold, it is the Board's concern that the transaction should not violate the spirit of section 17 of the Act. This does not preclude the recovery of development costs and expenses as well as those incurred in obtaining and maintaining zone status.

Section 400.28(c)

Comment: This section appeared as § 400.29 in the January 1990 notice, which contained a provision (§ 400.29(d)) proposing a special procedure for the revocation of subzone grants of authority based on non-compliance with special conditions. Several parties objected to such a provision, arguing that the Board must follow the same revocation procedures

for subzone grants as they do for general-purpose zone grants (§§ 400.29(a) and 400.29(b), Jan. 1990 notice).

Board Position: Upon consideration, the Board has decided not to adopt a special procedure for the revocation of subzone grants. Thus, the procedure for such revocations will be the same as for general-purpose zones, which is covered in § 400.28(c) of the final rule (see, FTZ Act section 18, 19 U.S.C. 81r). In reaching this decision, the Board notes that §§ 400.31(d) and 400.43 provide a means for taking action to prohibit or restrict the use of zone procedures, should there be a finding that special conditions applicable to zones or subzones are not being met. In addition, section 19 of the Act (19 U.S.C. 81s) authorizes the Board to impose fines for violations of the Act or the regulations (§ 400.11(a)(10)).

Section 400.29

Comment: Numerous comments were received in opposition to the provision for application fees which was incorporated in the November 1990 notice, setting forth a schedule of fees for applications for new general-purpose zones and subzones, and for expansions to zones, as well as for manufacturing review and boundary modifications (§ 400.30, Nov. 1990 notice). The commenters contended that the proposed fees are inconsistent with the FTZ Act, and with Congressional intent that zone procedures help firms reduce operating costs. They argued that the fees violate the Paperwork Reduction Act and the Regulatory Flexibility Act. Commenters also noted that the fees are too high and would serve as a disincentive for small business and discourage participation by small communities. Some objected to the fact that the fees would not be used to improve program administration because they must be deposited into the general Treasury receipts account.

Board Position: The statutory basis for such fees is 31 U.S.C. 9701, which provides that federal agencies should recover, to the extent possible, direct and indirect costs for activities which convey special benefits to recipients above and beyond those accruing to the public at large. Concurrence for the fees was received by the Department of Commerce from OMB in connection with the FY 1991 budget package of the Department of Commerce. The statute requires that the fees collected be deposited in the general Treasury receipts account.

The original proposed schedule was based on average staff costs attributable to the types of applications listed, taking into account the fact that some 80 percent of FTZ staff time is dedicated to the processing of applications. It was noted that the possibility of fees for reviews of ongoing zone activity remained under consideration.

After considering the comments in opposition, the Board has decided to revise the fee schedule to reduce the scope and amounts of the fees. While the Board recognizes the positive public effects of zone activity cited by the commenters, it must also take into account the private zone benefits which accrue to zone users and operators. Thus, the changes reflect a balancing of the purposes of the FTZ Act against those of the general user fee statute. Accordingly, the fees charged represent the recovery of administrative costs associated with the conferring of private benefits associated with the zone program. The proposed fees for the first zone project in a port of entry area are eliminated in light of the fact that the FTZ Act indicates that ports of entry are entitled to a zone upon meeting technical criteria. Also eliminated, at least for the time being, are the proposed fees for reviews of changes to ongoing activity, because the new procedures for such reviews are not yet tested. While there is a basis to retain fees for subzones because of the private nature of these facilities, two categories have been adopted to provide a reduction in the fee for subzones which do not involve manufacturing/processing or when less than three products are involved. The fees apply to applications received after the effective date of the regulations. They do not apply to applications submitted before that date in final form and in full compliance with the filing requirements in effect at the time of submission.

Section 400.31

Comment: There were numerous comments on this section as published in both the January 1990 and November 1990 notices. Most welcomed having a provision which delineates the criteria considered by the Board in its reviews of manufacturing activity, but there was disagreement on many of the specific provisions in the section. Sponsors and users of existing zones contended that many provisions exceed statutory requirements, imposing an excessive burden on zones and zone applicants. On the other hand, parties representing some domestic industries complained that the January 1990 version of the section was weakened in the November 1990 revised version. The comments are discussed below in more detail under the specific paragraph in question.

Board Position: Section 400.31 is a keystone provision of the new regulations, in conjunction with §§ 400.28 and 400.32. It sets forth the criteria for evaluation of manufacturing and processing activity either as part of new proposals or in the review of ongoing activity, and is also a reference for reviews on other matters involving public interest questions. Its statutory underpinning is the public interest provision of the Act (19 U.S.C. 81o(c); see also, 19 U.S.C. 81(c) and 81(g)), and paragraph (b) of the section enumerates the factors which provide the standard for defining what "public interest" means for purposes of administering the statute in regard to the evaluation of zone activity (see also, 19 U.S.C. 81(g)). The Board's broad discretionary authority in regard to public interest determinations was recognized in *Armco* v. *Stans, supra* at 785, in which the Court stated that the Act gives "the Board wide discretion to determine what activity may be pursued by trade zone manufacturers subject only to the legislative standard that a zone serve this country's interests in foreign trade, both export and import" (see also, *HIRI* v. *United States, supra*, "the Board may impose any condition which it deems advisable upon * * * the operation * * * of the subzone"). The comments and the Board's position are covered in the discussions of various subsections of § 400.31 that follow.

Section 400.31(b)

Comment: Numerous comments were received on this provision as it appeared in both FR notices. Many parties argued that the two-step process, especially the threshold provision (§ 400.31(b)(1)), unreasonably precludes the opportunity for the consideration of the economic factors in paragraph (b)(2). They maintained that the Act requires consideration of economic factors even when there are policy issues. Further, these critics contended that paragraphs (b)(1)(i) and (b)(1)(ii) are too vague, especially the latter. Commenters also argued that paragraph (b)(1)(iii) appears to earmark imports as being inherently negative and can be read to preclude consideration of items imported as components of products in determining whether there is an overall increase in imports.

Some commenters suggested that the economic factors enumerated in paragraph (b)(2) should include other factors such as import displacement, import penetration, investment effects, domestic industry competitiveness effects, technology transfers, and consumer effects. Several argued that, in considering impact on domestic industry (paragraph (b)(2)), only significant injury

to relevant domestic industries should be considered.

The parties that tend to support the two-step process and threshold test asserted that it should not be weakened, that the economic factors should be weighted, and that the consideration of impact on domestic industry should include suppliers of components.

Board Position: The Board has adopted the provision as it appeared in the November 1990 notice, with some minor clarifying and procedural revisions. It retains the two-step evaluation process with a threshold provision (§ 400.31(b)(1)) because it has been determined that such a procedure is needed for a more efficient decision-making process when there are valid policy reasons for denying or restricting certain activity. The threshold step in the review process is intended as a preliminary phase of the review during which there is an assessment to determine whether there are significant policy impediments. The review in this phase is conducted in the depth that is called for under the circumstances, and no discrete formal determination is required when a final decision is not to be made based on the threshold factors alone and the review proceeds to consideration of the phase-two economic factors. Applicants do not have the burden of demonstrating the absence of paragraph (b)(1) issues, but they and interested parties may submit comments and evidence.

The threshold test would preclude consideration of step-two economic factors (other than those found by the Board to be relative to paragraph (b)(1)(iii)) when the threshold issue presents a compelling basis for a decision, and consideration of the economic factors enumerated in paragraph (b)(2) would simply prolong and delay the decision to no purpose. Thus, paragraph (b)(1) embodies a long-standing Board practice of making decisions that are consistent with U.S. economic and trade policy, and it improves the practice by acknowledging the primacy of policy considerations and the possibility that the findings made at this phase of a review may be dispositive. When they are not, the consideration of policy matters would carry over into the second phase of the review (paragraph (b)(2)), depending upon the circumstances.

The Board has decided to retain paragraph (b)(1)(ii), but has clarified the paragraph to indicate that it would apply only when a zone manufacturing issue is related to important trade and tariff negotiations, or other initiatives even in their developmental stages. It is recognized that there must be special overriding circumstances before a decision is made based on this paragraph.

Paragraph (b)(1)(iii) was revised in the November 1990 notice, and has been further revised to clarify that this provision is intended only to cover situations in which there is a direct casual link between the use of zone procedures and the creation of imports that would not have occurred, but for zone procedures, i.e., "zone-created imports." The statement that the imports in question would be considered "both as individual items and as components of imported products", which was added in the November 1990 version, indicated that consideration will be given to relevant economic factors such as the fact that an item might be or might have been imported as a component of a finished product. Also, the provision is not intended to cover foreign shipments arriving as a result of growth in production and demand. In such situations, an import would not be considered to have been caused by zone procedures, and step two of the review process would provide a broader evaluation of economic factors. A reason for including this paragraph in the threshold provision is that it reflects a practice that has the standing of Board policy, i.e., that it is not in the public interest to allow zones to generate imports that "but for" zone procedures would not otherwise exist. The provision applies only to situations involving quota restrictions or inverted tariffs and does not apply to products to be reexported. The concerns expressed about reference to quotas and inverted tariffs in this paragraph appear to be misplaced because it actually narrows its scope.

The process associated with the threshold test includes a significant procedural step (paragraph (c)(1)) that gives applicants and affected parties an opportunity to submit further evidence on threshold factors before a decision is made. An examiner or reviewer making a negative finding must notify the applicant pursuant to § 400.27(d)(3)(vii)(A). This pre-decisional step is concerned with fair process and allows applicants to address policy issues of which they might not have been aware. It is especially important in providing an opportunity for the submission of evidence on factors in paragraphs (b)(1)(ii) and (b)(1)(iii). The final regulations have been revised to clarify the fact that this procedural step also applies to reviews of ongoing operations (§ 400.31(c)(1)).

The factors adopted by the Board in paragraph (b)(2) include consideration of the points made by interested parties, and specific reference has been made to technology transfers and investment effects to clarify that these are among the factors considered. It is not considered appropriate to adopt weighted values for individual factors, as their relative importance depends on the circumstances of individual cases. This does not imply a lack of recognition of the importance of zones in regard to exports and reexports. The potential for export and reexport will remain a major factor in Board decisions.

Section 400.31(c)

Comment: A number of comments were received on various provisions of this section (the original January 1990 version was revised in the November 1990 notice). The main objections to the original version were that it imposed a burden of proof that is contrary to the Act, that it conflicted with trade policy in referring to transplant activity, and that the paragraphs on economic effect and inverted tariffs established standards that exceed the Board's authority. Concern was expressed by several parties to revisions to the paragraph on burden of proof in the November 1990 version, including elimination of reference to a substantial evidence standard.

Board Position: The Board has essentially adopted the November 1990 version. The provision on burden of proof (§ 400.31(c)(3), Nov. 1990 notice) is revised and clarified to reflect the Board's view that an applicant should not have the evidentiary burden of proving both the existence of positive factors and absence of negative ones. This does not change the general requirement that applicants normally have the burden of presenting probative and substantial evidence to establish the basis for their requests. In the case of manufacturing or processing, this includes providing evidence which addresses the economic factors enumerated in § 400.31(b)(2) that are relevant in demonstrating that the activity is in the public interest.

The purpose of the provision is not weakened by the change made in the November 1990 version. It reflects current practice in requiring that applicants for subzones must also demonstrate a significant public benefit (§ 400.31(b), being a yardstick). This special requirement stems from the nature of subzones as single-user facilities which do not provide general zone services to the public (see, discussion under § 400.23(b)).

The provisions referring to inverted tariffs and transplant manufacturing which appeared in the January 1990

version of paragraph (c) were misinterpreted by many parties. The substantive coverage on these points is included within the provisions of paragraph (b), and, because they are so subsumed, this reference has been deleted from paragraph (c).

Section 400.31(d)

Comment: Many parties submitted comments expressing opposition to this provision, which was identical in both the January 1990 and November 1990 notices. Some were concerned that it creates unnecessary, costly reviews without prior evidence of a problem, thus creating uncertainty that could affect business decisions. There was concern that reviews could be triggered by unfounded complaints from parties not having a legitimate interest. On the other hand, a number of parties argued that all manufacturing should be subject at least to periodic five-year reviews.

Board Position: This section, which has been revised for clarification in the final version, is intended to establish a more structured approach to zone monitoring. It is based on the long-standing view that all zone activity remains subject to review in terms of its being in the public interest under changing circumstances. It provides a means for periodic checks to ensure that grant conditions are being met and that the public benefits projected in applications and proposals are being realized, e.g., shifts to domestic sourcing. It is not intended to become a means of restricting the continued use of zone procedures unless there is a clearly justifiable reason for doing so. The reviews will focus on areas of concern and should not disrupt ongoing activity. The reference to requests for reviews from outside parties has been clarified to indicate that they must be directly affected parties and show good cause. An example of a directly affected party would be one that produces a competing or like product, or a producer of components for such products. To show "good cause", parties would have to present evidence as to the circumstances that provide a basis for the review.

Section 400.32

Comment: A number of commenters expressed concern that the procedures of this section are too broad and burdensome in requiring Board approvals for minor changes in activity. On the other hand, others supported the provision so long as public notice is given and the opportunity for public comment and hearings is provided. Most of the negative comments reiterated the concerns that were expressed in regard to § 400.28, which is the underlying basis for the procedures covered in this section.

Board Position: This section is designed primarily to provide procedures for implementing the requirements set forth in §§ 400.23(a)(2) relating to changes in manufacturing and processing that occur after initial approval. It includes a fast track procedure under which the Commerce Department's Assistant Secretary for Import Administration can make final decisions when the activity: (1) Is the same as that previously approved for other zones; (2) is for export only; (3) does not involve election of a lower Customs tariff rate; or, (4) could be conducted under Customs bonded warehouse procedures. In consideration of the comments, the latter situation has been added to the final rule, as has a provision (paragraph (c)) delegating to the Executive Secretary authority to determine questions of scope. In those cases where there is a significant change warranting a full review, the procedure outlined in paragraph (b)(2) would apply.

Section 400.33

Comment: There were numerous comments received both for and against paragraph (b) of this section. A number of parties favored the provision, maintaining that it should not be weakened. Some contended that it should be extended to exports. The opponents argued that the Board should not abdicate its authority to review cases involving antidumping (AD) and countervailing (CVD) duty orders on a case-by-case basis. They maintained that the provision conflicts with the Act, which allows Customs entries to be made on finished products leaving zones unless there is a public interest reason for denying this option. Reference was made to the anti-circumvention provision of the AD/CVD regulations as a more appropriate remedy.

Board Position: It has been the general policy of the Board that zone procedures should not be used to circumvent AD/CVD orders. During the early part of the past decade, this policy was reflected in case-by-case reviews with parties having an opportunity to present evidence as to why they should be allowed to make entries on the finished products leaving zones. In recent years, it became a general practice to require that privileged-foreign status (item classified in its original condition) be elected on items that are subject to AD/CVD orders upon admission to zones, with exceptions possible only on public interest grounds.

The new rule goes a step further and precludes exceptions. It adopts an absolute requirement making all shipments of items covered by AD/CVD orders, or items which would be otherwise subject to suspension of liquidation under AD/CVD procedures if they entered U.S. Customs territory, subject to the privileged-foreign status requirement. The provision recognizes the special nature of AD/CVD duties as a remedy for unfair trade practices. In precluding relief from the effects of AD/CVD orders under zone procedures for goods other than exports, the Board notes that the AD/CVD statute itself prescribes situations and procedures under which it is appropriate to make exceptions to AD/CVD orders.

The Board cannot agree with the argument that the anti-circumvention provisions of the AD/CVD statute adequately address the zone issue. Those provisions mainly involve procedures that make it possible to include within the scope of AD/CVD orders items on which minor alterations are made. They do not cover items that are subject to such orders when they arrive in zones, but are substantially transformed prior to formal Customs entry.

Section 400.41

Comment: A number of parties expressed concern about the potential liability of zone grantees for infractions committed by zone operators or zone users when there has been no involvement by the grantee.

Board Position: This section recognizes that zones operate under the aegis of the grantees, even when the actual operation of zone facilities is contracted to other parties. The provision notes the general oversight responsibility of grantees to ensure that the reasonable needs of the business community are served by their zone projects. Grantees cannot delegate or assign their oversight role in operating contracts. However, the Board does not believe it is in the public interest to discourage public entities from zone sponsorship because of concern about liability without fault. Grantees should not be liable for the acts or violations of operators or users in which they share no fault. The regulations address this concern, indicating that grants of authority will not be construed to make grantees automatically liable for violations by others (§ 400.28(a)(9)). Grantees should discuss with Customs officials the potential for liability based upon the type of operation plan that has been adopted for the zone. The matter of potential liability can be discussed

when grantees seek the concurrence of Customs in the designation of zone operators (§ 400.2(s)).

Section 400.43

Comment: A few parties expressed concern about the broad authority encompassed in this provision, and suggested that it be clarified to indicate that the Board or the Executive Secretary has discretion under this provision not to initiate a review.

Board Position: This provision is intended as a statement of the Board's general authority under section 15(c) of the Act (19 U.S.C. 81o(d)) to prohibit or restrict activity which it finds detrimental to the public interest, health, or safety. It is consistent with current practice, and is intended to cover situations not otherwise provided for in the regulations where the foregoing section of the Act is directly applicable. The section could, for example, be the basis for Board action in response to findings that special conditions of subzone grants have not been met. As it appeared in the January 1990 notice, the provision included a delegation to the Executive Secretary so that the action could be taken immediately by this official when necessary, subject to Board review. Upon review, it has been concluded that full Board decisions can be expedited in such cases when necessary, so the final version adopted by the Board does not include the foregoing delegation of authority. However, the authority of the Executive Secretary to conduct reviews is retained as a means of providing the Board with recommendations when needed.

Section 400.45

Comment: A few parties contended that the District Director is not the appropriate party to determine whether activity is "retail trade" subject to this provision.

Board Position: This section is intended in implement the provision of the Act (19 U.S.C. 81o(d)) which provides that "no retail trade shall be conducted within a zone except under permits issued by the grantee and approved by the Board." The first question posed in these cases is whether activity is "retail trade." The District Director is considered the most appropriate official to make this determination, but a provision has been added in the final rule allowing grantees to seek Board review of such determinations.

List of Subjects in 15 CFR Part 400

Administrative practice and procedure, Confidential business information, Customs duties and inspection, Foreign-trade zones, Harbors, Imports, Reporting and recordkeeping requirements.

By order of the Board, Washington, D.C., this 24th day of September, 1991.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

For the reasons set forth in the preamble, 15 CFR part 400 is revised to read as follows:

PART 400—REGULATIONS OF THE FOREIGN-TRADE ZONES BOARD

Subpart A—Scope and Definitions

Sec.

Subpart B—Foreign-Trade Zones Board

Subpart C—Establishment and Modification of Zone Projects

Subpart D—Manufacturing and Processing Activity—Reviews

Subpart E—Zone Operations and Administrative Requirements

Subpart F—Notice, Hearings, Record and Information

Authority: Foreign-Trade Zones Act of June 18, 1934, as amended (Pub. L. 397, 73rd Congress, 48 Stat. 998–1003 (19 U.S.C. 81a–81u)).

Subpart A—Scope and Definitions

§ 400.1 Scope.

(a) This part sets forth the regulations, including the rules of practice and procedure, of the Foreign-Trade Zones Board with regard to foreign-trade zones in the United States pursuant to the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a–81u). It includes the substantive and procedural rules for the authorization of zones and the regulation of zone activity. The purpose of zones as stated in the Act is to "expedite and encourage foreign commerce, and other purposes." The regulations provide the legal framework for accomplishing this purpose in the context of evolving U.S. economic and trade policy, and economic factors relating to international competition.

(b) Part 146 of the regulations of the United States Customs Service (19 CFR part 146) governs zone operations, including the admission of merchandise into zones, zone activity involving such merchandise, and the transfer of merchandise from zones.

(c) To the extent "activated" under Customs procedures in 19 CFR part 146, and only for the purposes specified in the Act (19 U.S.C. 81c), zones are treated for purposes of the tariff laws and Customs entry procedures as being outside the Customs territory of the United States. Under zone procedures, foreign and domestic merchandise may be admitted into zones for operations such as storage, exhibition, assembly, manufacture and processing, without being subject to formal Customs entry procedures and payment of duties, unless and until the foreign merchandise enters Customs territory for domestic consumption. At that time, the importer ordinarily has a choice of paying duties either at the rate applicable to the foreign material in its condition as admitted into a zone, or if used in manufacturing or processing, to the emerging product. Quota restrictions do not normally apply to foreign goods in zones. The Board can deny or limit the use of zone procedures in specific cases on public interest grounds. Merchandise moved into zones for export (zone-restricted status) may be considered exported for purposes such as federal excise tax rebates and Customs drawback. Foreign merchandise (tangible personal property) admitted to a zone and domestic merchandise held in a zone for exportation are exempt for certain state and local *ad valorem* taxes (19 U.S.C. 81o(e)). Articles admitted into

zones for purposes not specified in the Act shall be subject to the tariff laws and regular entry procedures, including the payment of applicable duties, taxes, and fees.

§ 400.2 Definitions.

(a) *Act* means the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a–81u).

(b) *Board* means the Foreign-Trade Zones Board, which consists of the Secretary of the Department of Commerce (chairman), the Secretary of the Treasury, and the Secretary of the Army, or their designated alternates.

(c) *Customs Service* means the United States Customs Service of the Department of the Treasury.

(d) *District Director* is the director of Customs for the Customs district in which a zone or proposed zone is located.

(e) *District Engineer* is the engineer of the Department of the Army in whose district a zone or proposed zone is located.

(f) *Executive Secretary* is the Executive Secretary of the Foreign-Trade Zones Board.

(g) *Foreign-trade zone* is a restricted-access site, in or adjacent to a Customs port of entry, operated pursuant to public utility principles under the sponsorship of a corporation granted authority by the Board and under supervision of the Customs Service.

(h) *Grant of authority* is a document issued by the Board which authorizes a zone grantee to establish, operate and maintain a zone project or a subzone, subject to limitations and conditions specified in this part and in 19 CFR part 146. The authority to establish a zone includes the authority to operate and the responsibility to maintain it.

(i) *Manufacturing*, as used in this part, means activity involving the substantial transformation of a foreign article resulting in a new and different article having a different name, character, and use.

(j) *Port of entry* means a port of entry in the United States, as defined by part 101 of the regulations of the Customs Service (19 CFR part 101), or a user fee airport authorized under 19 U.S.C. 58b and listed in part 122 of the regulations of the Customs Service (19 CFR part 122).

(k) *Private corporation* means any corporation, other than a public corporation, which is organized for the purpose of establishing a zone project and which is chartered for this purpose under a law of the state in which the zone is located.

(l) *Processing*, when referring to zone activity, means any activity involving a change in condition of merchandise, other than manufacturing, which results in a change in the Customs classification of an article or in its eligibility for entry for consumption.

(m) *Public corporation* means a state, a political subdivision (including a municipality) or public agency thereof, or a corporate municipal instrumentality of one or more states.

(n) *Regional Commissioner* is the Regional Commissioner of Customs for the Customs region in which the zone is located.

(o) *State* includes any state of the United States, the District of Columbia, and Puerto Rico.

(p) *Subzone* means a special-purpose zone established as an adjunct to a zone project for a limited purpose.

(q) *Zone* means a foreign-trade zone established under the provisions of the Act and these regulations. Where used in this part, the term also includes subzones, unless the context indicates otherwise.

(r) *Zone grantee* is the corporate recipient of a grant of authority for a zone project. Where used in this part, the term "grantee" means "zone grantee" unless otherwise indicated.

(s) *Zone operator* is a corporation, partnership, or person that operates a zone or subzone under the terms of an agreement with the zone grantee or an intermediary entity, with the concurrence of the District Director.

(t) *Zone project* means the zone plan, including all of the zone and subzone sites that the Board authorizes a single grantee to establish.

(u) *Zone site* means the physical location of a zone or subzone.

(v) *Zone user* is a party using a zone under agreement with the zone grantee or operator.

Subpart B—Foreign-Trade Zones Board

§ 400.11 Authority of the board.

(a) *In general.* In accordance with the Act and procedures of this part, the Board has authority to:

(1) Prescribe rules and regulations concerning zones;

(2) Issue grants of authority for zones and subzones, and approve modifications to the original zone project;

(3) Approve manufacturing and processing activity in zones and subzones as described in subpart D of this part;

(4) Make determinations on matters requiring Board decisions under this part;

(5) Decide appeals in regard to certain decisions of the Commerce Department's Assistant Secretary for Import Administration or the Executive Secretary;

(6) Inspect the premises, operations and accounts of zone grantees and operators;

(7) Require zone grantees to report on zone operations;

(8) Report annually to the Congress on zone operations;

(9) Restrict or prohibit zone operations;

(10) Impose fines for violations of the Act and this part;

(11) Revoke grants of authority for cause; and

(12) Determine, as appropriate, whether zone activity is or would be in the public interest or detrimental to the public interest.

(b) *Authority of the Chairman of the Board.* The Chairman of the Board (Secretary of the Department of Commerce) has the authority to:

(1) Appoint the Executive Secretary of the Board;

(2) Call meetings of the Board, with reasonable notice given to each member; and

(3) Submit to the Congress the Board's annual report as prepared by the Executive Secretary.

(c) *Alternates.* Each member of the Board will designate an alternate with authority to act in an official capacity for that member.

(d) *Determinations of the Board.* (1) The determinations of the Board will be based on the majority vote of the members (or alternate members) of the Board, provided that a quorum, composed of the Secretaries of the Departments of Commerce and Treasury (or their alternates), is voting.

(2) All votes will be recorded.

(3) The Board will issue its determination in proceedings under the regulations in the form of a Board order.

§ 400.12 Responsibilities and authority of the Executive Secretary.

The Executive Secretary has the following responsibilities and authority:

(a) Represent the Board in administrative, regulatory, operational, and public affairs matters;

(b) Serve as director of the Commerce Department's Foreign-Trade Zones staff;

(c) Execute and implement orders of the Board;

(d) Arrange meetings and direct circulation of action documents for the Board;

(e) Arrange with other sections of the Department of Commerce, Board agencies and other governmental agencies for studies and comments on zone issues and proposals;

(f) Maintain custody of the seal, records, files and correspondence of the Board, with disposition subject to the regulations of the Department of Commerce;

(g) Issue notices on zone matters for publication in the **Federal Register**;

(h) Determine subzone sponsorship questions as provided in § 400.22(d);

(i) Determine whether additional information is needed for evaluation of applications and other requests for decisions under this part, as provided for in various sections of this part, including §§ 400.24, 400.25, and 400.26;

(j) Issue guidelines on information required for subzone applications under § 400.25(a)(6);

(k) Determine whether proposed modifications involve major changes under § 400.26(a)(2);

(l) Determine whether applications meet prefiling requirements under § 400.27(b);

(m) Direct processing of applications, including designation of examiners and scheduling of hearings under §§ 400.27 and 400.32;

(n) Authorize minor modifications to zone projects under § 400.27(f);

(o) Review changes in sourcing under § 400.28(a)(3);

(p) Direct monitoring of zone activity under § 400.31(d);

(q) Direct reviews and make recommendations on requests for manufacturing/processing approvals under § 400.32(b);

(r) Determine questions of scope under § 400.32(c);

(s) Accept rate schedules and determine their sufficiency under § 400.42(b)(3);

(t) Review and decide zone rate complaints cases under § 400.42(b)(5);

(u) Make recommendations in cases involving questions as to whether zone activity should be prohibited or restricted for public interest reasons, including reviews under § 400.43;

(v) Authorize under certain circumstances the return of "zone-restricted merchandise" for entry into Customs territory under § 400.44;

(w) Authorize certain duty-paid retail trade under § 400.45;

(x) Determine the format for the annual reports of zone grantees to the Board and direct preparation of an annual report to Congress from the Board under § 400.46(d); and

(y) Designate an acting Executive Secretary.

§ 400.13 Board headquarters.

The headquarters of the Board is located within the U.S. Department of Commerce (Herbert C. Hoover Building), Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230, as part of the office of the Foreign-Trade Zones staff.

Subpart C—Establishment and Modification of Zone Projects

§ 400.21 Number and location of zones and subzones.

(a) *Number of zone projects—port of entry entitlement.* (1) Provided that the other requirements of this subpart are met:

(i) Each port of entry is entitled to at least one zone project;

(ii) If a port of entry is located in more than one state, each of the states in which the port of entry is located is entitled to a zone project; and

(iii) If a port of entry is defined to include more than one city separated by a navigable waterway, each of the cities is entitled to a zone project.

(2) Zone projects in addition to those approved under the entitlement provision of paragraph (a)(1) of this section may be authorized by the Board if it determines that existing project(s) will not adequately serve the public interest (convenience of commerce).

(b) *Location of zones and subzones—port of entry adjacency requirements.* (1) The Act provides that the Board may approve "zones in or adjacent to ports of entry" (19 U.S.C. 81b).

(2) The "adjacency" requirement is satisfied if:

(i) A general-purpose zone is located within 60 statute miles or 90 minutes' driving time from the outer limits of a port of entry;

(ii) A subzone meets the following requirements relating to Customs supervision:

(A) Proper Customs oversight can be accomplished with physical and electronic means; and

(B) All electronically produced records are maintained in a format compatible with the requirements of the U.S. Customs Service for the duration of the record period; and

(C) The grantee/operator agrees to present merchandise for examination at a Customs site selected by Customs when requested, and further agrees to present all necessary documents directly to the Customs oversight office.

§ 400.22 Eligible applicants.

(a) *In general.* Subject to the other provisions of this section, public or private corporations may apply for a grant of authority to establish a zone project. The board will give preference to public corporations.

(b) *Public and non-profit corporations.* The eligibility of public and non-profit corporations to apply for a grant of authority shall be supported by a enabling legislation of the legislature of the state in which the zone is to be located, indicating that the corporation, individually or as part of a class, is authorized to so apply.

(c) *Private for-profit corporations.* The eligibility of private for-profit corporations to apply for a grant of authority shall be supported by a special act of the state legislature naming the applicant corporation and by evidence indicating that the corporation is chartered for the purpose of establishing a zone.

(d) *Applicants for subzones*—(1) *Eligibility.* The following entities are eligible to apply for a grant of authority to establish a subzone:

(i) The zone grantee of the closest zone project in the same state;

(ii) The zone grantee of another zone in the same state, which is a public corporation, if the Board, or the Executive Secretary, finds that such sponsorship better serves the public interest; or

(iii) A state agency specifically authorized to submit such an application by an act of the state legislature.

(2) *Complaints.* If an application is submitted under paragraph (d)(1) (ii) or (iii) of this section, the Executive Secretary will:

(i) Notify, in writing, the grantee specified in paragraph (d)(1)(i) of this section, who may, within 30 days, object to such sponsorship, in writing, with supporting information as to why the public interest would be better served by its acting as sponsor;

(ii) Review such objections prior to filing the application to determine whether the proposed sponsorship is in the public interest, taking into account:

(A) The complaining zone's structure and operation;

(B) The views of State and local public agencies; and

(C) The views of the proposed subzone operator;

(iii) Notify the applicant and complainants in writing of the Executive Secretary's determination;

(iv) If the Executive Secretary determines that the proposed sponsorship is in the public interest, file the application (see § 400.47 regarding appeals to decisions of the Executive Secretary).

§ 400.23 Criteria for grants of authority for zones and subzones.

(a) *Zones.* The Board will consider the following factors in determining whether to issue a grant of authority for a zone project:

(1) The need for zone services in the port of entry area, taking into account existing as well as projected international trade related activities and employment impact;

(2) The adequacy of the operational and financial plans and the suitability of the proposed sites and facilities, with justification for duplicative sites;

(3) The extent of state and local government support, as indicated by the compatibility of the zone project with the community's master plan or stated goals for economic development and the views of State and local public officials involved in economic development. Such officials shall avoid commitments that anticipate outcome of Board decisions;

(4) The views of persons and firms likely to be affected by proposed zone activity; and

(5) If the proposal involves manufacturing or processing activity, the criteria in § 400.31.

(b) *Subzones.* In reviewing proposals for subzones the Board will also consider:

(1) Whether the operation could be located in or otherwise accommodated by the multi-purpose facilities of the zone project serving the area;

(2) The specific zone benefits sought and the significant public benefit(s) involved supported by evidence to meet the requirement in § 400.31(c); and

(3) Whether the proposed activity is in the public interest, taking into account the criteria in § 400.31.

§ 400.24 Application for zone.

(a) *In general.* An application for a grant of authority to establish a zone project shall consist of a transmittal letter, an executive summary and five exhibits.

(b) *Letter of transmittal.* The transmittal letter shall be currently dated and signed by an authorized officer of the corporation and bear the corporate seal.

(c) *Executive summary.* The executive summary shall describe:

(1) The corporation's legal authority to apply;

(2) The type of authority requested from the Board;

(3) The proposed zone site and facilities and the larger project of which the zone is a part;

(4) The project background, including surveys and studies;

(5) The relationship of the project to the community's and state's overall economic development plans and objectives;

(6) The plans for operating and financing the project; and

(7) Any additional pertinent information needed for a complete summary description of the proposal.

(d) *Exhibits.* (1) Exhibit One (Legal Authority for the Application) shall consist of:

(i) A certified copy of the state enabling legislation described in § 400.22;

(ii) A copy of pertinent sections of the applicant's charter or organization papers; and

(iii) A certified copy of the resolution of the governing body of the corporation authorizing the official signing the application.

(2) Exhibit Two (Site Description) shall consist of:

(i) A detailed description of the zone site, including size, location, address, and a legal description of the area proposed for approval; a table with site designations shall be included when more than one site is involved;

(ii) A summary description of the larger project of which the zone is a part, including type, size, location and address;

(iii) A statement as to whether the zone is within or adjacent to a customs port of entry;

(iv) A description of zone facilities and services, including dimensions and types of existing and proposed structures;

(v) A description of existing or proposed site qualifications including: land-use zoning, relationship to flood-plain, infrastructure, utilities, security, and access to transportation services;

(vi) A description of current activities carried on in or contiguous to the project;

(vii) If part of a port facility, a summary of port and transportation services and facilities; if not, a summary description of transportation systems indicating connections from local and regional points of arrival to the zone; and

(viii) A statement as to the possibilities and plans for zone expansion.

(3) Exhibit Three (Operation and Financing) shall consist of:

(i) A statement as to site ownership (if not owned by the applicant or proposed operator, evidence as to their legal right to use the site);

(ii) A discussion of the operational plan (if the zone or a portion thereof is to be operated by other than the grantee, a summary of the selection process used or to be used, the type of operation agreement and, if available, the name and qualifications of the proposed operator);

(iii) A brief explanation of the plans for providing facilities, physical security, and for satisfying the requirements for Customs automated systems;

(iv) A summary of the plans for financing capital and operating costs, including a statement as to the source and use of funds; and

(v) The estimated time schedule for construction and activation.

(4) Exhibit Four (Economic Justification) shall include:

(i) A statement of the community's overall economic goals and strategies in relation to those of the region and state;

(ii) A reference to the plan or plans on which the goals are based and how they relate to the zone project;

(iii) An economic profile of the community including identification and discussion of dominant sectors in terms of percentage of employment or income, area resources and problems, economic imbalances, unemployment rates, area foreign trade statistics, and area port facilities and transportation networks;

(iv) A statement as to the role and objective of the zone project, and a justification for each of the proposed sites;

(v) A discussion of the anticipated economic impact, direct and indirect, of the zone project, including references to public costs and benefits, employment, U.S. international trade, and environmental impact;

(vi) A statement as to the need for zone services in the community, with information on surveys of business, and specific expressions of interest from proposed zone users, with letters of intent from those firms that are considered prime prospects; and

(vii) A description of proposed manufacturing and processing operations, if applicable, with information covering the factors described in § 400.31(b), including the nature and scope of the operation and production process, materials and components used, items to be foreign sourced with relevant tariff information, zone benefits anticipated and how they will affect the firm's plans, and the economic impact of the operation on the community and on related domestic industries.

(5) Exhibit Five (Maps) shall consist of:

(i) The following maps and drawings:

(A) State and county maps showing the general location of the zone in terms of the area's transportation network;

(B) A U.S. Geodetic Survey map or the equivalent showing in red the location of the proposed zone; and

(C) A detailed blueprint of the zone or subzone area showing zone boundaries in red, with dimensions and metes and bounds, or other legal description, and

showing existing and proposed structures.

(ii) Proposals involving existing zones shall include a drawing showing existing zone sites and the proposed changes.

(e) *Additional information.* The Board or the Executive Secretary may require additional information needed to adequately evaluate a proposal.

(f) *Amendment of application.* The Board or the Executive Secretary may allow amendment of the application.

(g) *Drafts.* Applicants may submit a draft application to the Executive Secretary for review.

(h) *Format and number of copies.* Unless the Executive Secretary alters the requirements of this paragraph, submit an original and 12 copies of the application on 8½" x 11" (216 x 279 mm) paper. Exhibit Five of the original application shall contain full-sized maps, and copies shall contain letter-sized reductions.

(i) *Where to file.* Address and mail the application to the Secretary of Commerce, Attention: Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230.

(Approved by the Office of Management and Budget under control number 0625–0139)

§ 400.25 Application for subzone.

(a) *In general.* An application to establish a subzone as part of a proposed or existing zone shall be submitted in accordance with the format in § 400.24, except that the focus of the information provided in Exhibit Four shall be on the specific activity involved and its net economic effect. The information submitted in Exhibit Four shall include:

(1) A summary as to the reasons for the subzone and an explanation of its anticipated economic effects;

(2) Identity of the subzone user and its corporate affiliation;

(3) Description of the proposed activity, including:

(i) Products;

(ii) Materials and Components;

(iii) Sourcing plans (domestic/foreign);

(iv) Tariff rates and other import requirements or restrictions;

(v) Information to assist the Board in making a determination under §§ 400.31(b)(1)(iii) and 400.31(b)(2);

(vi) Benefits to subzone user;

(vii) Information required in § 400.24(d)(4)(vii);

(viii) Information as to whether alternative procedures have been considered as a means of obtaining the benefits sought;

(ix) Information on the industry involved and extent of international competition; and

(x) Economic impact of the operation on the area;

(4) Reason operation cannot be conducted within a general-purpose zone;

(5) Statement as to environmental impact; and

(6) Any additional information requested by the Board or the Executive Secretary in order to conduct the review. The Executive Secretary may issue guidelines as to the kind of detailed information needed for various types of subzone cases.

(b) *Burden of proof.* An applicant for a subzone must demonstrate to the Board that the proposed operation meets the criteria in § 400.23(b).

(Approved by the Office of Management and Budget under control number 0625–0139)

§ 400.26 Application for expansion or other modification to zone project.

(a) *In general.* (1) A grantee may apply to the Board for authority to expand or otherwise modify its zone project.

(2) The Executive Secretary, in consultation with the District Director, will determine whether the proposed modification involves a major change in the zone plan and is thus subject to paragraph (b) of this section, or is minor and subject to paragraph (c) of this section. In making this determination the Executive Secretary will consider the extent to which the proposed modification would:

(i) Substantially modify the plan originally approved by the Board; or

(ii) Expand the physical dimensions of the approved zone area as related to the scope of operations envisioned in the original plan.

(b) *Major modification to zone project.* An application for a major modification to an approved zone project shall be submitted in accordance with the format in § 400.24, except that:

(1) Reference may be made to current information in an application from the same applicant on file with the Board; and

(2) The content of Exhibit Four shall relate specifically to the proposed change.

(c) *Minor modification to zone project.* Other applications or requests under this subpart, including those for minor revisions of zone boundaries, grant of authority transfers, or time extensions, shall be submitted in letter form with information and documentation necessary for analysis, as determined by the Executive Secretary, who shall determine whether the proposed change is a minor one subject to this paragraph (c) instead of paragraph (b) of this section (see, § 400.27(f)).

(d) *Applications for other revisions to grants of authority.* Applications or requests for revisions to grants of authority, such as restriction modifications, shall be submitted in letter form with information and documentation necessary for analysis, as determined by the Executive Secretary. If the change involves removal or significant modification of a restriction included by the Board in a grant of authority, the review procedures of § 400.32 shall apply. If not, the procedure set forth in § 400.27(f) shall apply.

(Approved by the Office of Management and Budget under control number 0625–0139)

§ 400.27 Procedure for processing application.

(a) *In general.* This section outlines the procedure followed in processing applications submitted under §§ 400.24–400.26. In addition, it sets forth the time schedules which will normally be applied in processing applications. The schedules will provide guidance to applicants with respect to the time frames for each of the procedural steps involved in the Board's review. Under these schedules, applications involving manufacturing or processing activity would be processed within 1 year, and those not involving such activity, within 10 months. While the schedules set forth a standard time frame, the Board may determine that it requires additional time based on special circumstances, such as when the public comment period must be reopened pursuant to paragraphs (d)(2)(v)(B) and (d)(3)(vi)(B) of this section.

(b) *Prefiling review.* Applications subject to § 400.29 shall be accompanied with a check in accordance with that section, and will be dated upon receipt at the headquarters of the Board. The Executive Secretary will determine whether the application satisfies the requirements of §§ 400.22–400.24, 400.25, 400.26, 400.32, and other applicable provisions of this part.

(1) If the application is deficient, the Executive Secretary will notify the applicant within 20 days of receipt of the application, specifying the deficiencies. The applicant shall correct the deficiencies and submit the correct application within 30 days of notification. Otherwise, the application (original) will be returned.

(2) If the application is sufficient, the Executive Secretary will within 45 days of receipt of the application:

(i) Formally file the application, thereby initiating the proceeding or review;

(ii) Assign a case docket number in cases requiring a Board order; and

(iii) Notify the applicant.

(c) *Procedure—Executive Secretary responsibilities.* After initiating a proceeding based on an application under §§ 400.24–400.25, or 400.26(b), the Executive Secretary will:

(1) Designate an examiner to conduct a review and prepare a report with recommendations for the Board;

(2) Publish in the **Federal Register** a notice of the formal filing of the application and initiation of the review which includes the name of the applicant, a description of the zone project, information as to any hearing scheduled at the outset, and an invitation for public comment, including a time period during which the public may submit evidence, factual information, and written arguments. Normally, the comment period will close 60 days after the date the notice appears, except that, if a hearing is held (see, § 400.51), the period will not close prior to 15 days after the date of the hearing. The closing date for general comment will ordinarily be followed by an additional 15-day period for rebuttal comments;

(3) Send copies of the filing and initiation notice and the application to:

(i) The Commissioner of Customs and the Regional Commissioner, or a designee; and

(ii) The Resident Member, Board of Engineers for Rivers and Harbors, Department of the Army, and the District Engineer;

(4) Arrange for hearings, as appropriate;

(5) Transmit the reports and recommendations of the examiner and of the officials identified in paragraph (c)(3) of this section to the Board for appropriate action; and

(6) Notify the applicant in writing and publish notice in the **Federal Register** of the Board's determination.

(d) *Case reviews—procedure and time schedule*—(1) *Customs and army engineer review.* The Regional Commissioner (Customs), or a designee, and the District Engineer (Army), in accordance with the regulations and directives of their respective agencies, will submit their technical reports to the Executive Secretary within 45 days of the conclusion of the public comment period described in paragraph (c)(2) of this section.

(2) *Examiners reviews—non-manufacturing/processing.* Examiners assigned to cases not involving manufacturing or processing activity shall conduct a review taking into account the factors enumerated in § 400.23 and other appropriate sections of this part, which shall include:

(i) Conducting or participating in necessary hearings scheduled by the Executive Secretary;

(ii) Reviewing case records, including public comments;

(iii) Requesting information and evidence from parties of record;

(iv) Developing information and evidence necessary for evaluation and analysis of the application in accordance with the criteria of the Act and this part;

(v) Preparing a report with recommendations to the Board and submitting it to the Executive Secretary within 120 days of the close of the period for public comment (see, paragraph (c)(2) of this section).

(A) If the report is unfavorable to the applicant, it shall be considered a preliminary report and the applicant shall be notified within 5 days (in writing or by phone) and given 30 days from the date of notification in which to respond to the report and submit additional evidence.

(B) If the response contains new evidence on which there has not been an opportunity for public comment, the Executive Secretary will publish notice in the **Federal Register** after completion of the review of the response. The new material will be made available for public inspection and the **Federal Register** notice will invite further public comment for 30 days, with an additional 15-day period for rebuttal comments.

(C) The Customs and District Engineer (Army) advisers shall be notified when necessary for their further comments, which shall be submitted within 45 days after their notification.

(D) The examiners report in a situation under paragraph (d)(2)(v)(A) of this section shall be completed and submitted to the Executive Secretary within 30 days after receipt of additional evidence or notice from the applicant that there will be none; except that, if paragraph (d)(2)(v)(B) of this section applies, the report will be submitted within 30 days of the close of the period for public comment.

(3) *Examiners reviews—cases involving manufacturing or processing activity.* Examiners shall conduct a review taking into account the factors enumerated in § 400.23, § 400.31, and other appropriate sections of this part, which shall include:

(i) Conducting or participating in hearings scheduled by the Executive Secretary;

(ii) Reviewing case records, including public comments;

(iii) Requesting information and evidence from parties of record;

(iv) Developing information and evidence necessary for analysis of the threshold factors and the economic factors enumerated in § 400.31;

(v) Conducting an analysis to include:

(A) An evaluation of policy considerations pursuant to §§ 400.31(b)(1)(i) and 400.31(b)(1)(ii);

(B) An evaluation of the economic factors enumerated in §§ 400.31(b)(1)(iii) and 400.31(b)(2), which shall include an evaluation of the economic impact on domestic industry, considering both producers of like products and producers of components/materials used in the manufacture/processing or assembly of the products. The evaluation will take into account such factors as market conditions, price sensitivity, degree and nature of foreign competition, effect on exports and imports, and the net effect on U.S. employment;

(vi) Conducting appropriate industry surveys when necessary; and

(vii) Preparing a report with recommendations to the Board and submitting it to the Executive Secretary within 150 days of the close of the period for public comment:

(A) If the report is unfavorable to the applicant, it shall be considered a preliminary report and the applicant shall be notified (in writing or by phone) and given 45 days from the date of notification in which to respond to the report and submit additional evidence pertinent to the factors considered in the report.

(B) If the response contains new evidence on which there has not been an opportunity for public comment, the Executive Secretary will publish notice in the **Federal Register** after completion of the review of the response. The new material will be made available for public inspection and the **Federal Register** notice will invite further public comment for 30 days, with an additional 15-day period for rebuttal comments.

(e) *Procedure—Completion of review*—(1) The Executive Secretary will circulate the examiners report with recommendations to Board members for their review and votes (by resolution).

(2) The Treasury and Army Board members will return their votes to the Executive Secretary within 30 days, unless a formal meeting is requested (see, § 400.11(d)).

(3) The Commerce Department will complete the decision process within 15 days of receiving the votes of both other Board members, and the Executive

Secretary will publish the Board decision.

(f) *Procedure—Application for minor modification of zone project.* (1) The Executive Secretary, with the concurrence of the District Director, will make a determination in cases under § 400.26(c) involving minor changes to zone projects that do not require a Board order, such as boundary modifications, including certain relocations, and will notify the applicant in writing of the decision within 30 days of the determination that the application or request can be processed under § 400.26(c).

(2) The District Director shall provide the decision as to concurrence within 20 days after being notified of the request or application.

§ 400.28 Conditions, prohibitions and restrictions applicable to grants of authority.

(a) *In general.* Grants of authority issued by the Board for the establishment of zones or subzones, including those already issued, are subject to the Act and this part and the following general conditions or limitations:

(1) Approvals from the grantee and the District Director, pursuant to 19 CFR part 146, are required prior to the activation of any portion of an approved zone project; and

(2) Approval of the Board or the Commerce Department's Assistant Secretary for Import Administration pursuant to subpart D of this part is required prior to the commencement of manufacturing beyond the scope of that approved as part of the application or pursuant to reviews under this part (e.g., new end products, significant expansions of plant production capacity), and of similar changes in processing activity which involves foreign articles subject to quantitative import controls (quotas) or results in articles subject to a lower (actual or effective) duty rate (inverted tariff) than any of their foreign components.

(3) *Sourcing changes*—(i) *Notification requirement.* The grantee or operator of a zone or subzone shall notify the Executive Secretary when there is a change in sourcing for authorized manufacturing or processing activity which involves the use of new foreign articles subject to quotas or inverted tariffs, unless—

(A) Entries for consumption are not to be made at the lower duty rate; or

(B) The product in which the foreign articles are to be incorporated is being produced for exportation.

(ii) *Notification procedure.* Notification shall be given prior to the commencement of the activity, when possible, otherwise at the time the new foreign articles arrive in the zone or are withdrawn from inventory for use in production. Requests may be made to the Executive Secretary for authority to submit notification of sourcing changes on a quarterly federal fiscal year basis covering changes in the previous quarter.

(iii) *Reviews* (A) Upon notification of a sourcing change under paragraph (a)(3)(i) of this section, within 30 days, the Executive Secretary will conduct a preliminary review of the changes in relation to the approved activity to determine whether they could have significant adverse effects, taking into account the factors enumerated in § 400.31(b), and will submit a report and recommendation to the Commerce Department's Assistant Secretary for Import Administration, who shall determine whether review is necessary. The procedures of § 400.32(b) shall be used in these situations when appropriate.

(B) The Board or the Commerce Department's Assistant Secretary for Import Administration may, based on public interest grounds, prohibit or restrict the use of zone procedures in regard to the change in sourcing, including requiring that items be placed in privileged foreign status (19 CFR 146.41) upon admission to a zone or subzone.

(C) The Executive Secretary shall direct reviews necessary to ensure that activity involved in these situations continues to be in the public interest.

(4) Prior to activation of a zone, the zone grantee or operator shall obtain all necessary permits from federal, state and local authorities, and except as otherwise specified in the Act or this part, shall comply with the requirements of those authorities.

(5) A grant of authority for a zone or a subzone shall lapse unless the zone project (in case of subzones, the subzone facility) is activated, pursuant to 19 CFR part 146, and in operation not later than five years from:

(i) A Board order (authorizing the zone or subzone) issued after November 7, 1991; or

(ii) November 7, 1991.

(6) A grant of authority approved under this subpart includes authority for the grantee to permit the erection of buildings necessary to carry out the approved zone project subject to concurrence of the District Director.

(7) Zone grantees, operators, and users shall permit federal government officials acting in an official capacity to have access to the zone project and records during normal business hours and under other reasonable circumstances.

(8) A grant of authority may not be sold, conveyed, transferred, set over, or assigned (FTZ Act, section 7; 19 U.S.C. 81q). Private ownership of zone land and facilities is permitted provided the zone grantee retains the control necessary to implement the approved zone project. Should title to land or facilities be transferred after a grant of authority is issued, the zone grantee must retain, by agreement with the new owner, a level of control which allows the grantee to carry out its responsibilities as grantee. The sale of a zone site or facility for more than its fair market value without zone status could, depending on the circumstances, be subject to section 7 of the Act.

(9) A grant of authority will not be construed to make the zone grantee automatically liable for violations by operators, users, or other parties.

(b) *Additional conditions, prohibitions and restrictions.* Other requirements, conditions or restrictions under Federal, State or local law may apply to the zone or subzone authorized by the grant of authority.

(c) *Revocation of grants of authority.*

(1) *In general.* As provided in this section, the Board can revoke in whole or in part a grant of authority for a zone or subzone whenever it determines that the zone grantee or, in the case of subzones, the subzone operator, has violated, repeatedly and willfully, the provisions of the Act.

(2) *Procedure.* When the Board has reason to believe that the conditions for revocation, as described in paragraph (a) of this section, are met, the Board will:

(i) Notify the zone or subzone grantee in writing stating the nature of the alleged violations, and provide the grantee an opportunity to request a hearing on the proposed revocation;

(ii) Conduct a hearing, if requested or otherwise if appropriate;

(iii) Make a determination on the record of the proceeding not earlier than 4 months after providing notice to the zone grantee under paragraph (b)(1) of this section; and

(iv) If the Board's determination is affirmative, publish notice of revocation of the grant of authority in the **Federal Register**.

(3) As provided in section 18 of the Act (19 U.S.C. 81r(c)), the zone or subzone grantee may appeal an order of the Board revoking the grant of authority.

§ 400.29 Application fees.

(a) *In general.* This section sets forth a uniform system of charges in the form of fees to recover some costs incurred by the Foreign-Trade Zones staff of the Department of Commerce in processing the applications listed in paragraph (b) of this section. The legal authority for the fees is 31 U.S.C. 9701, which provides for the collection of user fees by agencies of the Federal Government.

(b) *Uniform system of user fee charges.* The following graduated fee schedule establishes fees for certain types of applications and requests for authority based on their average processing time. Applications combining requests for more than one type of approval are subject to the fee for each category.

(1) Additional general-purpose zones (§ 400.24; § 400.21(a)(2))	$3,200
(2) Special-purpose subzones (§ 400.25):	
(i) Non-manufacturing/processing or less than three products	4,000
(ii) Manufacturing/processing—three or more products	6,500
(3) Expansions (§ 400.28(b))	1,600

(c) Applications submitted to the Board shall include a check drawn on a national or state bank or trust company of the United States or Puerto Rico in the amount called for in paragraph (b) of this section. Uncertified checks must be acceptable for deposit by a Federal Reserve bank or branch.

(d) Applicants shall make their checks payable to the U.S. Department of Commerce ITA. The checks will be deposited by ITA into the Treasury receipts account. If applications are found deficient under § 400.27(b)(1), or withdrawn by applicants prior to formal filing, refunds will be made.

Subpart D—Manufacturing and Processing Activity—Reviews

§ 400.31 Manufacturing and processing activity; criteria.

(a) *In general.* Pursuant to section 15(c) of the Act (19 U.S.C. 810(c)), the Board has authority to restrict or prohibit zone activity "that in its judgment is detrimental to the public interest." When evaluating zone and subzone manufacturing and processing activity, either as proposed in an application, in a request for manufacturing/processing approval, or as part of a review of an ongoing operation, the Board shall determine whether the activity is in the public interest by reviewing it in relation to the evaluation criteria contained in paragraph (b) of this section. With regard to processing activity, this section shall apply only when the activity involves foreign articles subject to quantitative import controls (quotas) or results in articles subject to a lower duty rate (inverted tariff) than any of their foreign components. Such a review involves consideration of whether the activity is consistent with trade policy and programs, and whether its net economic effect is positive.

(b) *Evaluation criteria*—(1) *Threshold factors.* It is the policy of the Board to authorize zone activity only when it is consistent with public policy and, in regard to activity involving foreign merchandise subject to quotas or inverted tariffs, when zone procedures are not the sole determining cause of imports. Thus, without undertaking a review of the economic factors enumerated in § 400.31(b)(2), the Board shall deny or restrict authority for proposed or ongoing activity if it determines that:

(i) The activity is inconsistent with U.S. trade and tariff law, or policy which has been formally adopted by the Executive branch;

(ii) Board approval of the activity under review would seriously prejudice U.S. tariff and trade negotiations or other initiatives; or

(iii) The activity involves items subject to quantitative import controls or inverted tariffs, and the use of zone procedures would be the direct and sole cause of imports that, but for such procedures, would not likely otherwise have occurred, taking into account imports both as individual items and as components of imported products.

(2) *Economic factors.* After its review of threshold factors, if there is a basis for further consideration, the Board shall consider the following factors in determiing the net economic effect of the activity of proposed activity:

(i) Overall employment impact;

(ii) Exports and reexports;

(iii) Retention or creation of manufacturing or processing activity;

(iv) Extent of value-added activity;

(v) Overall effect on import levels of relevant products, including import displacement;

(vi) Extent and nature of foreign competition in relevant products;

(vii) Impact on related domestic industry, taking into account market conditions; and

(viii) Other relevant information relating to public interest and net economic impact considerations, including technology transfers and investment effects.

(c) *Methodology and evidence*—(1)(i) The first phase (§ 400.31(b)) involves consideration of threshold factors. If an examiner or reviewer makes a negative finding on any of the factors in paragraph (b)(1) of this section in the course of a review, the applicant shall be informed pursuant to § 400.27(d)(3)(vii)(A). When threshold factors are the basis for a negative recommendation in a review of ongoing activity, the zone grantee and directly affected party shall be notified and given an opportunity to submit evidence pursuant to § 400.27(d)(3)(vii)(A). If the Board determines in the negative any of the factors in paragraph (b)(1) of this section, it shall deny or restrict authority for the proposed or ongoing activity.

(ii) The process for paragraph (b)(2) of this section involves consideration of the enumerated economic factors, taking into account their relative weight and significance under the circumstances. Previous evaluations in similar cases are considered. The net effect is arrived at by balancing the positive and negative factors and arriving at a net economic effect.

(2) *Contributory effect.* In assessing the significance of the economic effect of the zone activity as part of the consideration of economic factors, and in consideration of whether there is a significant public benefit, the Board may consider the contributory effect zone savings have as an incremental part of cost effectiveness programs adopted by companies to improve their international competitiveness.

(3) *Burden of proof.* Applicants for subzones shall have the burden of submitting evidence establishing that the activity does or would result in a significant public benefit, taking into account the factors in paragraph (b) of this section. Applicants for approval of manufacturing or processing in general-purpose zones shall submit evidence regarding the positive economic effects that would result from activity within the zone and may submit evidence and comments as to policy considerations. Both types of applicants are expected to submit information in response to evidence of adverse economic effects during the public comment period. Parties should submit evidence that is probative and substantial in addressing the matter in issue.

(d) *Monitoring and post-approval reviews*—(1) Ongoing zone activity may be reviewed at anytime to determine whether it is in compliance with the Act and regulations, as well as the authority granted by the Board. Reviews may also be conducted to determine whether there are changed circumstances that raise questions as to whether the activity is detrimental to the public interest, taking into account the factors

enumerated in § 400.31. The Board may prescribe special monitoring requirements in its decisions when appropriate.

(2) Reviews may be initiated by the Board, the Commerce Department's Assistant Secretary for Import Administration, or the Executive Secretary; or, they may be undertaken in response to requests from parties directly affected by the activity in question and showing good cause.

(3) Upon review, if the Board finds that zone activity is no longer in the public interest, taking into account the provisions of § 400.31, it may restrict the activity in question. The appropriateness of a delayed effective date will be considered in such cases.

§ 400.32 Procedure for review of request for approval of manufacturing or processing.

(a) *Request as part of application for grant of authority.* A request for approval of proposed manufacturing or processing activity may be submitted as part of an application under §§ 400.24–400.26(a). The Board will review the request taking into account the criteria in § 400.31(b).

(b) *Request for manufacturing/processing in approved zone or subzone.* Prior to the commencement of manufacturing in a zone or subzone involving activity beyond the scope of that which has been previously authorized at the facility (i.e., new end products, significant expansions of plant production capacity), and of similar changes in processing activity that involves foreign articles subject to quotas or inverted tariffs, zone grantees or operators shall request the determination referred to in § 400.31(a) by submitting a request in writing to the Executive Secretary (§ 400.28(a)(2)). Such requests shall include the information required by §§ 400.24(d)(4)(vii) and 400.25.

(1) The Commerce Department's Assistant Secretary for Import Administration may make determinations in these cases based upon a review by the FTZ staff and the recommendation of the Executive Secretary, when:

(i) The proposed activity is the same, in terms of products involved, to activity recently approved by the Board and similar in circumstances; or

(ii) The activity is for export only; or

(iii) The zone benefits sought do not involve the election of non-privileged foreign status (19 CFR 146.42) on items involving inverted tariffs; or

(iv) The District Director determines that the activity could otherwise be conducted under Customs bonded procedures.

(2) When the informal procedure in paragraph (b)(1) of this section is not appropriate—

(i) The Executive Secretary will:

(A) Assign a case docket number and give notice in the **Federal Register** inviting public comment;

(B) Arrange a public hearing, if appropriate;

(C) Appoint an examiner, if appropriate, to conduct a review and prepare a report with recommendations for the Board; and

(D) Prepare and transmit a report with recommendations, or transmit the examiners report, to the Board for appropriate action; and

(ii) The Board will make a determination on the requests, and the Executive Secretary will notify the grantee in writing of the Board's determination, and will publish notice of the determination in the **Federal Register.**

(c) *Scope determinations.* Determinations shall be made by the Executive Secretary as to whether changes in activity are within the scope of related activity already approved for the facility involved under this part. When warranted, the procedures of paragraph (b)(2) of this section will be followed.

§ 400.33 Restrictions on manufacturing and processing activity.

(a) *In general.* In approving manufacturing or processing activity for a zone or subzone the Board may adopt restrictions to protect the public interest, health, or safety. The Commerce Department's Assistant Secretary for Import Administration may similarly adopt restrictions in exercising authority under § 400.32(b)(1).

(b) *Restrictions on items subject to antidumping and countervailing duty actions*—(1) *Board policy.* Zone procedures shall not be used to circumvent antidumping (AD) and countervailing duty (CVD) actions under 19 CFR parts 353 and 355.

(2) *Admission of items subject to AD/CVD actions.* Items subject to AD/CVD orders or items which would be otherwise subject to suspension of liquidation under AD/CVD procedures, if they entered U.S. Customs territory, shall be placed in privileged foreign status (19 CFR 146.41) upon admission to a zone or subzone. Upon entry for consumption, such items shall be subject to duties under AD/CVD orders or to suspension of liquidation, as appropriate, under 19 CFR parts 353 and 355.

Subpart E—Zone Operations and Administrative Requirements

§ 400.41 Zone operations; general.

Zones shall be operated by or under the contractual oversight of zone grantees, subject to the requirements of the Act and this part, as well as those of other federal, state and local agencies having jurisdiction over the site and operation. Zone grantees shall ensure that the reasonable zone needs of the business community are served by their zone projects. The District Director represents the Board with regard to the zone projects in the district and is responsible for enforcement, including physical security and access requirements, as provided in 19 CFR part 146.

§ 400.42 Requirements for commencement of operations in a zone project.

(a) *In general.* The following actions are required before operations in a zone may commence:

(1) Approval by the District Director of an application for activation is required as provided in 19 CFR part 146; and

(2) The Executive Secretary will review proposed manufacturing or processing, pursuant to § 400.32, and a zone schedule as provided in this section.

(b) *Zone schedule.* (1) The zone grantee shall submit to the Executive Secretary and to the District Director a zone schedule which sets forth:

(i) Internal rules and regulations for the zone; and

(ii) A statement of the rates and charges (fees) applicable to zone users.

(2) A zone schedule shall consist of typed, loose-leaf, numbered, letter-sized pages, enclosed in covers, and shall contain:

(i) A title page, with information to include:

(A) The name of the zone grantee and operator(s);

(B) Schedule identification;

(C) Site description;

(D) Date of original schedule; and

(E) Name of the preparer;

(ii) A table of contents;

(iii) Administrative information;

(iv) A statement of zone operating policy, rules and regulations, including uniform procedures regarding the construction of buildings and facilities; and

(v) A section listing rates and charges for zones and subzones with information sufficient for the Board or the Executive Secretary to determine whether the rates and charges are reasonable based

on other like operations in the port of entry area, and whether there is uniform treatment under like circumstances among zone users.

(3) The Executive Secretary will review the schedule to determine whether it contains sufficient information for users concerning the operation of the facility and a statement of rates and charges as provided in paragraph (b)(2) of this section. If the Executive Secretary determines that the schedule satisfies these requirements, the Executive Secretary will notify the zone grantee, unless there is a basis for review under paragraph (b)(5) of this section. A copy of the schedule shall be available for public inspection at the offices of the zone grantee and operator. The zone grantee shall send a copy to the District Director, who may submit comments to the Executive Secretary.

(4) Amendments to the schedule shall be prepared and submitted in the manner described in paragraphs (b)(1) through (b)(3) of this section, and listed in the concluding section of the schedule, with dates.

(5) A zone user or prospective user showing good cause may object to the zone or subzone fee on the basis that it is not reasonable, fair and uniform, by submitting to the Executive Secretary a complaint in writing with supporting information. The Executive Secretary will review the complaint and issue a report and decision, which will be final unless appealed to the Board within 30 days. The Board or the Executive Secretary may otherwise initiate a review for cause. The factors considered in reviewing reasonableness and fairness, will include:

(i) The going-rates and charges for like operations in the area and the extra costs of operating a zone, including return on investment; and

(ii) In the case of subzones, the value of actual services rendered by the zone grantee or operator, and reasonable out-of-pocket expenses.

§ 400.43 Restriction and prohibition of certain zone operations.

(a) *In general.* After review, the Board may restrict or prohibit any admission of merchandise into a zone project or operation in a zone project when it determines that such activity is detrimental to the public interest, health or safety.

(b) *Initiation of review.* The Board may conduct a proceeding, or the Executive Secretary a review, to consider a restriction or prohibition under paragraph (a) of this section either self-initiated, or in response to a complaint made to the Board by a party directly affected by the activity in question and showing good cause.

§ 400.44 Zone-restricted merchandise.

(a) *In general.* Merchandise which has been given export status by Customs officials ("zone-restricted merchandise"—19 CFR 146.44) may be returned to the Customs Territory of the United States only when the Board determines that the return would be in the public interest. Such returns are subject to the Customs laws and the payment of applicable duties and excise taxes (19 U.S.C. 81c, 4th proviso).

(b) *Criteria.* In making the determination described in paragraph (a) of this section, the Board will consider:

(1) The intent of the parties;

(2) Why the goods cannot be exported;

(3) The public benefit involved in allowing their return; and

(4) The recommendation of the District Director.

(c) *Procedure.* (1) A request for authority to return "zone-restricted" merchandise into Customs territory shall be made to the Executive Secretary in letter form by the zone grantee or operator of the zone in which the merchandise is located, with supporting information and documentation.

(2) The Executive Secretary will investigate the request and prepare a report for the Board.

(3) The Executive Secretary may act for the Board under this section in cases involving merchandise valued at 500,000 dollars or less, provided requests are accompanied with a letter of concurrence from the District Director.

§ 400.45 Retail trade.

(a) *In general.* Retail is prohibited in zones, except that sales or other commercial activity involving domestic, duty-paid, and duty-free goods may be conducted within an activated zone project under permits issued by the zone grantee and approved by the Board, with the further exception that no permits shall be necessary for sales involving domestic, duty-paid or duty-free food and non-alcoholic beverage products sold within the zone or subzone for consumption on premises by persons working therein. The District Director will determine whether an activity is retail trade, subject to review by the Board when the zone grantee requests such a review with a good cause.

(b) *Procedure.* Requests for Board approval under this section shall be submitted in letter form, with supporting documentation, to the District Director, who is authorized to act for the Board in these cases, subject to the concurrence of the Executive Secretary.

(c) *Criteria.* In evaluating requests under this section, the District Director and the Executive Secretary will consider:

(1) Whether any public benefits would result from approval; and

(2) The economic effect such activity would have on the retail trade outside the zone in the port of entry area.

§ 400.46 Accounts, records and reports.

(a) *Zone accounts.* Zone accounts shall be maintained in accordance with generally accepted accounting principles, and in compliance with the requirements of federal, state or local agencies having jurisdiction over the site or operation.

(b) *Records and forms.* Zone records and forms shall be prepared and maintained in accordance with the requirements of the Customs Service and the Board, and the zone grantee shall retain copies of applications it submits to the Board.

(c) *Maps and drawings.* Zone grantees or operators, and District Directors, shall keep current layout drawings of approved sites as described in § 400.24(d)(5), showing activated portions, and a file showing required approvals. The zone grantee shall furnish necessary maps to the District Director.

(d) *Annual reports* (1) Zone grantees shall submit annual reports to the Board at the time and in the format prescribed by the Executive Secretary, for use by the Executive Secretary in the preparation of the Board's annual report to the Congress.

(2) The Board shall submit an annual report to the Congress.

(Approved by the Office of Management and Budget under control number (0625-0109)

§ 400.47 Appeals to the Board from decisions of the Assistant Secretary for Import Administration and the Executive Secretary.

(a) *In general.* Decisions of the Assistant Secretary for Import Administration and the Executive Secretary made pursuant to §§ 400.22(d)(2)(ii), 400.32(b)(1), 400.44(c)(3), and 400.45(b)(2) may be appealed to the Board by adversely affected parties showing good cause.

(b) *Procedures.* Parties appealing a decision under paragraph (a) of this section shall submit a request for review to the Board in writing, stating the basis for the request, and attaching a copy of the decision in question, as well as supporting information and documentation. After a review, the

Board will notify the complaining party of its decision in writing.

Subpart F—Notice, Hearings, Record and Information

§ 400.51 Notice and hearings.

(a) *In general.* The Executive Secretary will publish notice in the **Federal Register** inviting public comment on applications docketed for Board action (see, § 400.27(c)), and with regard to other reviews or matters considered under this part when public comment is necessary. Applicants shall give appropriate notice of their proposals in local newspapers. The Board, the Secretary, the Commerce Department's Assistant Secretary for Import Administration, or the Executive Secretary, as appropriate, may schedule and/or hold hearings during any proceedings or reviews conducted under this part whenever necessary or appropriate.

(b) *Requests for hearings*—(1) A directly affected party showing good cause may request a hearing during a proceeding or review.

(2) The request must be made within 30 days of the beginning of the period for public comment (see, § 400.27) and must be accompanied by information establishing the need for the hearing and the basis for the requesting party's interest in the matter.

(3) A determination as to the need for the hearing will be made by the Commerce Department's Assistant Secretary for Import Administration within 15 days after the receipt of such a request.

(c) *Procedure for public hearings.* The Board will publish notice in the **Federal Register** of the date, time and location of a hearing. All participants shall have the opportunity to make a presentation. Applicants and their witnesses shall ordinarily appear first. The presiding officer may adopt time limits for individual presentations.

§ 400.52 Official record; public access.

(a) *Content.* The Executive Secretary will maintain at the location stated in § 400.53(d) an official record of each proceeding within the Board's jurisdiction. The Executive Secretary will include in the official record all factual information, written argument, and other material developed by, presented to, or obtained by the Board in connection with the proceeding. The official record will contain material that is public, business proprietary, privileged, and classified. While there is no requirement that a verbatim record shall be kept of public hearings, the proceedings of such hearings shall ordinarily be recorded and transcribed when significant opposition is involved.

(b) *Opening and closing of official record.* The official record opens on the date the Executive Secretary files an application or receives a request that satisfies the applicable requirements of this part and closes on the date of the final determination in the proceeding or review, as applicable.

(c) *Protection of the official record.* Unless otherwise ordered in a particular case by the Executive Secretary, the official record will not be removed from the Department of Commerce. A certified copy of the record will be made available to any court before which any aspect of a proceeding is under review, with appropriate safeguards to prevent disclosure of proprietary or privileged information.

§ 400.53 Information.

(a) *Request for information.* The Board may request submission of any information, including business proprietary information, and written argument necessary or appropriate to the proceeding.

(b) *Public information.* Except as provided in paragraph (c) of this section, the Board will consider all information submitted in a proceeding to be public information. If the person submitting the information does not agree to its public disclosure, the Board will return the information and not consider it in the proceeding.

(c) *Business proprietary information.* Persons submitting business proprietary information and requesting protection from public disclosure shall mark the cover page "business proprietary," as well as the top of each page on which such information appears.

(d) *Disclosure of information.* Disclosure of public information will be governed by 15 CFR part 4. Public information in the official record will be available for inspection and copying at the Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce Building, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230.

[FR Doc. 91-24130 Filed 10-3-91; 3:50 pm]
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H.J. Res. 23/Pub. L. 102–112
To authorize the President to issue a proclamation designating each of the weeks beginning on November 24, 1991, and November 22, 1992, as "National Family Week".(Oct. 3, 1991; 105 Stat. 576; 1 page) Price: $1.00

H.J. Res. 233/Pub. L. 102–113
Designating September 20, 1991, as "National POW/MIA Recognition Day", and authorizing display of the National League of Families POW/MIA flag. (Oct. 3, 1991; 105 Stat. 577; 2 pages) Price: $1.00

S.J. Res. 73/Pub. L. 102–114
Designating October 1991 as "National Domestic Violence Awareness Month". (Oct. 3, 1991; 105 Stat. 579; 2 pages) Price: $1.00

S.J. Res. 125/Pub. L. 102–115
To designate October 1991 as "Polish-American Heritage Month". (Oct. 3, 1991; 105 Stat. 581; 2 pages) Price: $1.00

S.J. Res. 126/Pub. L. 102–116
To designate the Second Sunday in October of 1991 as "National Children's Day". (Oct. 3, 1991; 105 Stat. 583; 2 pages) Price: $1.00

S.J. Res. 151/Pub. L. 102–117
To designate October 6, 1991, and October 6, 1992, as"German-American Day". (Oct. 3, 1991; 105 Stat. 585; 1 page) Price: $1.00

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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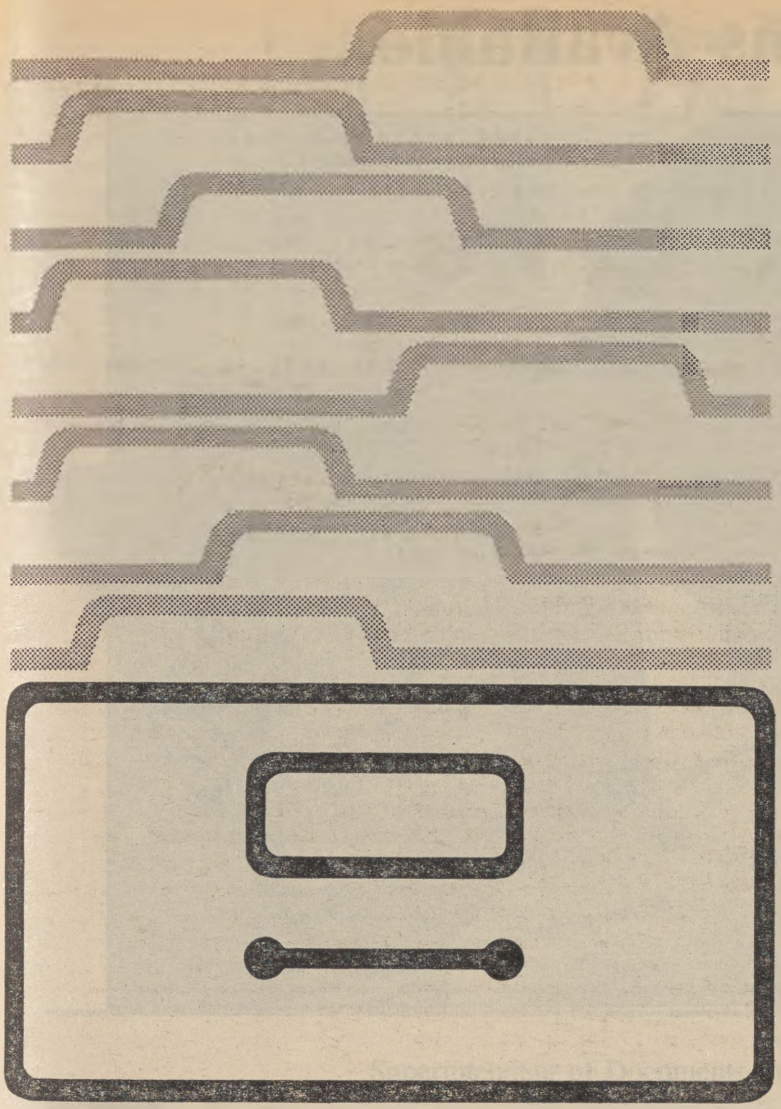

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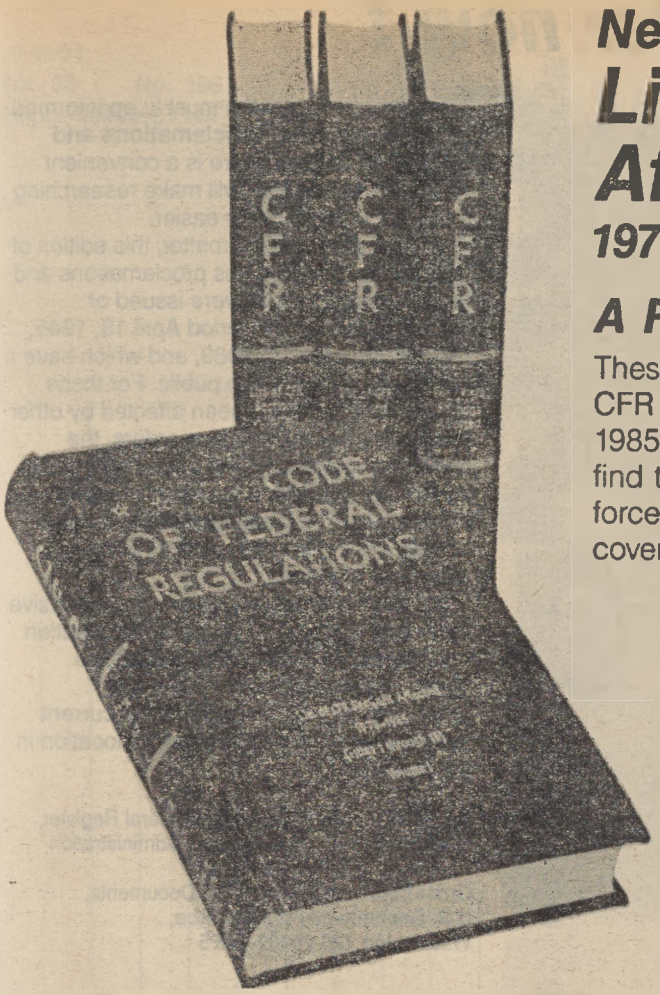

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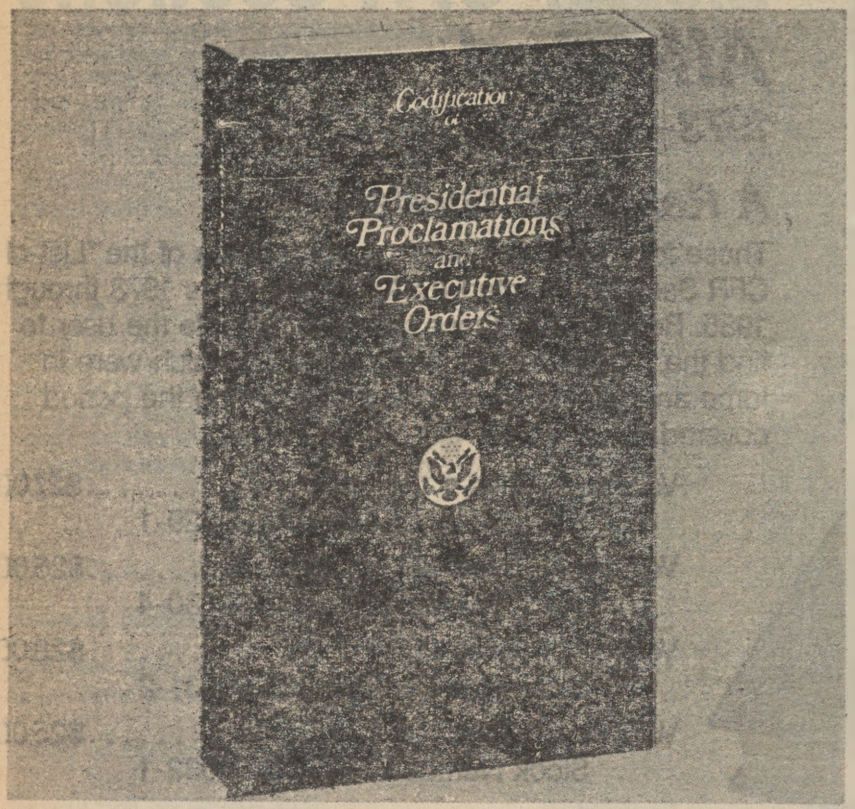

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